16-620

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 157.

THE UNITED STATES, INTERVENOR, APPELLANT,

vs.

JAMES H. WILSON, RECEIVER OF THE SAINT LOUIS AND SOUTHEASTERN RAILWAY COMPANY, CONSOLIDATED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED DECEMBER 3, 1879.

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INDEX.

	Original.	Print.
Caption	1	1
Original bill	1	1
Schedule A to original bill (deed)	37	11
Answer to original bill	74	24
Bond of J. F. Alexander, receiver	75	24
Amended bill	78	25
Schedule A to amended bill (deed)	109	36
Schedule B to amended bill (deed)	118	39
Bond of Jas. H. Wilson, receiver	121	40
Answer to amended bill	124	41
Intervening petition of the United States	127	42
Subpœna to answer same	133	44
Assessment of taxes due United States	135	45
Answer of receiver to said petition	138	46
Replication of United States to answer	141	48
Deposition of F. Pfister	143	48
Report of clerk and master on claim	144	49
Exceptions of defendant to report	146	50
Form of certificate of indebtedness	147	51
Stipulation of counsel	148	51
Decree appointing receiver, &c., October 24, 1874	149	52
December 7, 1874	158	55
May 21, 1875	159	56
July 1, 1875	160	56
October 23, 1875	161	56

	Original.	Print.
Decree May 10, 1878	162	57
October 31, 1878	162	57
November 1, 1878	163	58
April 21, 1879	183	65
May 30, 1879	185	70
May 30, 1879	196	70
May 30, 1879	198	71
May 31, 1879, and appeal to Supreme Court United States	201	72
May 31, 1879	201	72
June 14, 1879	203	73
Clerk's certificate	204	73

a Circuit court of the United States, middle district of Tennessee.

PHILO C. CALHOUN AND GEORGE OPDYKE, trustees,
vs.
THE ST. L. & S. E. RAILWAY COMPANY (consolidated), et al.

In the matter of the United States vs. James H. Wilson, receiver of said corporation, defendant, by intervening petition therein.

1 *Caption.*

MIDDLE DISTRICT OF TENNESSEE:

At a circuit court of the United States, begun and held in the Federal court room in the city of Nashville, on the third Monday, being the 21st day of April, A. D. 1879.

Present the Hon'l John Baxter, United States circuit judge.

The following proceedings were had, to wit:

On October 24th, 1874, a bill was filed in the words and figures following, to wit:

O. bill.

In the circuit court of the United States for the middle district of Tennessee. In equity.

To the honorable the judges of the circuit court of the United States for the middle district of Tennessee, in the sixth circuit, sitting in equity.

Humbly complaining show unto your honors, your orators Philo C. Calhoun and George Opdyke, trustees, as hereinafter mentioned, residents of New York City, in the State of New York and citizens of the said
State of New York, who bring this bill of complaint against the
2 St. Louis and Southeastern Railway Company (consolidated), a
corporation created & existing under and by virtue of the laws of the State of Tennessee, the Nashville, Chicago & St. Louis Railroad Company, a corporation created & existing under & by virtue of the laws of the State of Tennessee.

And thereupon your orators complain & say that under & by virtue of an act of the legislature of the State of Illinois, entitled "An act to incorporate the St. Louis and Southeastern Railway Company," passed March 10, 1869, then was created in due form of law, a body politic & corporate under the name of the St. Louis and Southeastern Railway Company, with all the powers, rights, privileges, franchises, & immunities mentioned in & granted by the said act & by the general laws of the State of Illinois.

Your orators further show unto your honors that the said St. Louis and
Southeastern Railway Company, on or about the 10th day of
3 March, 1869, & at other times prior to the date of the mortgage
hereinafter mentioned, became possessed of the power, right, privilege, and franchise of constructing, maintaining, & using a railroad in the State of Illinois from East St. Louis upon the Mississippi River, thence

to Mt. Vernon, thence to McLeansboro', thence to Equality, & thence to Shawneetown on the Ohio River, all in the said State of Illinois, with necessary sidings, and also branches not extending ten miles in length. And also, the power, right, privilege, & franchise to make, execute, & issue bonds secured by mortgage upon its property & franchises, & the right & franchise to consolidate with other railways or railroad companies within or without the State of Illinois.

And your orators further show unto your honors that the said company after its organization, commenced the construction of its said railroad & continued said work, and put in operation the said railroad as
4 follows: Commencing from a point on the easterly bank of the Mississippi River, opposite to the city of St. Louis, and known as East St. Louis, in the State of Illinois, through the counties of St. Clair, Clinton, Washington, Jefferson, Hamilton, Saline, & Gallatin in the said State of Illinois, to Shawneetown, upon the northerly bank of the Ohio River, being about one hundred & forty-two miles of road, and also a branch railroad known as the O'Fallen Branch, running from Belleville, in the said county of St. Clair, to O'Fallen, in the same county, & being about six miles in length.

And your orators further show unto your honors that by an act of the legislature of the State of Illinois, entitled "An act to incorporate the Evansville and Southern Illinois Railroad Company," passed the 26th day of March, 1869, there was created in due form of law a body politic & corporate under the name of the Evansville & Southern Illinois
5 Railroad Company, with all the powers, rights, privileges, franchises, & immunities, mentioned in and granted by the said act, & by the general laws of the State of Illinois.

And your orators further show unto your honors that the said Evansville and Southern Illinois Railroad Company, on or about the 26th day of March, 1869, & at other times prior to the date of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, & franchise of constructing, maintaining, & using a railroad in the State of Illinois, from the town of McLeansboro, Hamilton County, in the State of Illinois, through the towns of Enfield and Carmi, in White County, Illinois, to the dividing line between the States of Indiana & Illinois, on the Big Wabash River. And also the power, right, privilege, & franchise to make, execute, & issue bonds, secured by mortgage upon its property & franchises, & the right & franchise to consolidate with other railway
6 or railroad companies within or without the State of Illinois.

And your orators further show unto your honors that the Congress of the United States, by a joint resolution approved July 14, 1870, granted to the Evansville and Southern Illinois Railroad Company the right to construct a bridge for railroad purposes & as a public highway across the Big Wabash River.

And your orators further show unto your honors that the said company, after it organization, commenced the construction of its railroad & continued said work, and put in operation the said railroad as follows: Commencing from a point in the town of McLeansboro, in the county of Hamilton & State of Illinois, & running through the towns of Enfield & Carmi, in White County, Illinois, to the dividing line between the States of Indiana & Illinois, on the Big Wabash River, & constructed a bridge over the Big Wabash River.

And your orators further show unto your honors that the said
7 St. Louis & Southeastern Railway Company & the said Evansville
& Southern Illinois Railway Company, so incorporated as aforesaid,
acting under & by authority of their respective charters & the laws of the State of Illinois, did, on the 21st day of Feb'y, 1871, consolidate, amalgamate, & merge their said corporations into one body corporate, called & named the St. Louis and Southeastern Railroad Company, the said body corporate succeeding to all the rights, privileges, immunities, advantages, franchises, easements, and choses in action of said companies.

And your orators further show unto your honors that under and pursuant to the laws of the State of Indiana, & especially under an act of the legislature of the State, entitled "An act to provide for the incorporation of railroad companies," approved May 11th, 1852, & the acts amendatory thereof & supplemental thereto, a corporation was duly formed & incorporated by a compliance with all the requirements of said act, & by virtue
of said act & said compliance became a body corporate, under the
8 name of the Evansville, Carmi and Paducah Railroad Company,
for the purpose, among other things, of constructing & operating a
railroad in the State of Indiana, through the counties of Vanderburgh & Posey, in the said State of Indiana, in the general direction of Carmi, in the State of Illinois, to a point on the bank of the Wabash River, which corporation was duly empowered, under the laws of the State of Indiana, among other things, to consolidate with any other railroad constructed or in process of construction within the State of Indiana, or in any adjoining State, upon such terms as might be mutually agreed upon, thereby making one corporation of the two railroads so consolidated; and was also empowered to issue its bonds, secured by mortgage upon its railroads, its property, & franchises.

And your orators further show your honors that the company, after its
organization, commenced the construction of its said railroad &
9 continued said work, & put in operation the said railroad, as fol-
lows: Commencing at a point on the Wabash River at the easterly
end of the aforesaid bridge over the said river, built by the Evansville & Southern Illinois Railroad Company, & running thence through the said counties of Vanderburgh & Posey to Evansville on the Ohio River.

And your orators further show unto your honors that the aforesaid St. Louis and Southeastern Railroad Company, by virtue of the consolidation aforesaid, succeeded to the rights and franchises of the said Evansville and Southern Illinois Railroad Company and the St. Louis and Southeastern Railroad Company, & possessed such rights & franchises as fully & completely as the said Evansville and Southern Illinois Railroad Company and the St. Louis and Southeastern Railway Company had & possessed the same.

And your orators further show unto your honors that by an act of the
general assembly of the commonwealth of Kentucky, approved
10 Jan'y 27th, 1867, there was created in due form of law a body
politic & corporate under the name of the Evansville, Henderson
and Nashville Railroad Company, with all rights, privileges, franchises, and immunities mentioned in & granted by the said act & by the several

acts of the legislature passed supplementary thereto & amendatory thereof, & by the general laws of the State of Kentucky, & especially by the acts passed by the said general assembly, & entitled as follows: "An act for the relief of the stockholders of the Evansville, Henderson and Nashville Railroad Company," approved April 19th, 1873; "An act to grant and confirm unto the St. Louis and Southeastern Railway Company (consolidated) the rights, powers, privileges, franchises, and immunities of the Henderson and Nashville Railroad Company and the St. Louis and Southeastern Railway Company (Kentucky division)," approved Feb'y 3, 1874.

11 And which acts your orators pray may be taken & received as part of this their bill of complaint.

And your orators further show unto your honors that the said Evansville, Henderson and Nashville Railroad Company, on or about the 27th day of January, 1869, and at other times prior to the date of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, & franchises of constructing a railroad from Henderson, on the Ohio River, to the line between the States of Kentucky and Tennessee, in the direction of Nashville, Tennessee, together with franchises, rights, & privileges mentioned in the aforesaid acts.

And your orators further show unto your honors that among the powers of the said Evansville, Henderson and Nashville Railroad Company, granted to it by the aforesaid acts was the power to construct & operate a railroad from Henderson southerly to the State line between Kentucky & Tennessee, to carry freights from Henderson to Evans-
12 ville, by steamboat or by building an additional line of railroad & bridging the Ohio River, & also the right to consolidate its company with other railroad companies owning lines of railroad connecting with it directly or by means of intervening lines whether within or without the State of Kentucky, & also the power to make, issue, & sell bonds secured by mortgage upon its property & franchises.

And your orators further show unto your honors that the said company, after its organization, commenced the construction of its said railroad & continued said work, & put in operation the said railroad as follows:

Commencing at a point on the Ohio River at the city of Henderson, in the county of Henderson, in the State of Kentucky, & running through the counties of Webster, Hopkins, Todd, & Christian in said State
13 to the dividing line between the States of Kentucky and Tennessee, in the direction of Nashville, Tenn.

And your orators further show unto your honors that by an act of the general assembly of the commonwealth of Kentucky, approved Feb'y 18, 1870, there was created in due form of law a body politic and corporate, under the name of the Madisonville and Shawneetown Straight Line Railroad Company, with all the rights, privileges, franchises, & immunities mentioned in and granted by the said act and by the acts amendatory thereof and by the general laws of the State of Kentucky.

And your orators further show unto your honors that by an act of the general assembly of the commonwealth of Kentucky, passed in Feb'y 1872, the name of the Madisonville and Shawneetown Straight Line Railroad Company was changed to the St. Louis and Southeastern Railway Company (Kentucky division).

And your orators further show unto your honors that the said

14 St. Louis and Southeastern Railway Company (Kentucky division), on or about the 18th day of Feb'y 1870, and at other times
prior to execution of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, and franchises of constructing, maintaining, and using a railroad in the State of Kentucky, from Caseyville, and upon the Ohio River, opposite Shawneetown, to Madisonville, and also the rights and franchises, by the consent of the holders of a majority and value of all the stock to, consolidate their company with any other railroad company upon such terms as might be agreed upon, and also the power to make, issue, and sell bonds secured by mortgage upon its property and franchises.

And your orators further show unto your honors that the said company,
after its organization, commenced the construction of its said rail-
16 road in the counties of Union & Webster, in the State of Kentucky.

And your orators further show unto your honors that under & in pursuance of an act of the legislature of the State of Tennessee, passed 13th Feb'y, 1852, there was created in due form of law a body politic & corporate, under the name of the Edgefield & Kentucky Railroad Company, with all the powers, rights, privileges, franchises, & immunities mentioned in & granted by the said act, and by acts amendatory thereof, or supplemental thereto, & by the general laws of the State of Tennessee.

And your orators further show unto your honors that on the 13th day
of Feb'y, 1852, & at other times prior to the execution of the mortgage
hereinafter mentioned, the Edgefield & Kentucky Railroad Company had
authority to build a railway from some point on the northerly side of the
Cumberland River, convenient to the city of Nashville, to the Ken-
16 tucky State line, so as to unite with any Kentucky railroad company
running to Henderson, & the power to make, issue, & sell bonds
secured by mortgage upon its property & franchises. And by subsequent acts it was authorized to unite with other companies in bridging the Cumberland River, & to unite with the Louisville & Nashville Railroad Company in building a common track from Edgefield Junction to Nashvile, & south of the Cumberland River, not over ten miles in length.

And your orators further show unto your honors that said company, after its organization, commenced the construction of its said railroad, & continued said work & put in operation the said railroad, as follows: Commencing at a point in the city of Nashville, & running through the counties of Davidson & Robertson, in the State of Tennessee, to the Kentucky State line, at a point near Guthrie, in the State of Kentucky.

17 And your orators further show unto your honors that the State
of Tennessee having advanced money to the said Edgefield and
Kentucky Railroad Company, under its general laws, taking a lien therefor upon the property & franchises of the said company, in the year 1871 foreclosed its lien & obtained from the court of chancery of the State of Tennessee for the county of Davidson a decree of foreclosure & sale made on the day of , 18 ; under which decree there was had a sale of such property to the county of Davidson & others. That by the terms of the decree & the laws of the State of Tennessee the purchase, at the foreclosure sale succeeded to all the franchises & rights of the Edgefield and Kentucky Railroad Company, & was authorized to apply to the chancery court for the county of Davidson, Tennessee, for a decree mak-

ing such substitution & granting such new powers as should be desired.
18 That subsequently by means of several mesne conveyances
Edward F. Winslow became the purchaser & owner of the aforesaid
railroad; that an application having been made to the aforesaid court of
chancery, a decree of such court was duly made upon the 1st day of April,
1872, resting all the franchises of the Edgefield and Kentucky Railroad
Company, its stock, & property, in the purchasers of the railroad, changing
the name of the company to that of the Nashville, Chicago and St. Louis
Railroad Company, & giving full power to merge & consolidate the road,
property, & franchises of the company with those of any other company,
whether within or without the State of Tennessee, with which it should
be connected directly or by means of intervening lines on such terms &
conditions as should be agreed upon by the consolidating companies; that
on the 2nd day of Sept., 1872, a further decree was made by the
19 said court of chancery, confirming & extending the said powers,
which decrees your orators pray may be taken as part of this bill
of complaint.

And your orators further show unto your honors that the aforesaid St. Louis and Southeastern Railroad Company of Illinois and Indiana, the aforesaid St. Louis and Southeastern Railroad Company, Kentucky division; the aforesaid Evansville, Henderson and Nashville Railroad Company, and the aforesaid Nashville, Chicago and St. Louis Railroad Company, so incorporated as aforesaid, acting under & by authority of their respective charters and of the respective laws of the States of Illinois, Indiana, Kentucky, and Tennessee, did, on or about the 29th day of July, 1872, in due form of law, agree to consolidate, amalgamate, & merge their said corporations into one body corporate, called & named the St. Louis and Southeastern Railway Company (consolidated); the said body
corporate to succeed to all the rights, privileges, immunities, ad-
20 vantages, franchises, easements, and choses in action of said com-
panies.

And your orators further show unto your honors that on or about the 1st day of October, 1872, under & by virtue of the said agreement of consolidation duly entered into by & between the St. Louis and Southeastern Railway Company, a corporation created & existing under & by virtue of the laws of the State' of Illinois and Indiana; the Evansville, Henderson and Nashville Railroad Company, a corporation created and existing under & by virtue of the laws of the commonwealth of Kentucky; the St. Louis and Southeastern Railway Company, Kentucky division, a corporation created & existing under & by virtue of the laws of the commonwealth of Kentucky; the Nashville, Chicago and St. Louis Railroad Company, a corporation created & existing under & by virtue of the laws of the State
of Tennessee, these became lawfully created under & in pursuance
21 of the statutes in such cases made & provided a corporation which
is the corporation defendant herein, under the name of the St. Louis
and Southeastern Railway Company (consolidated), and that the said company from time to time became possessed of, & now possesses, all the powers, rights, privileges, franchises, & immunities mentioned in & granted by the legislatures of the States of Illinois, Indiana, and Tennessee, & by the general assembly of the commonwealth of Kentucky, respectively, by the sundry acts hereinbefore set forth, giving & granting to the several

companies entering into the aforesaid agreement of consolidation, respectively, the powers, rights, privileges, franchises, & immunities hereinbefore more fully set forth & mentioned in the said acts respectively.

And your orators further show unto your honors that the said St. Louis
and Southeastern Railway Company (consolidated), on or about the
22 1st day of October, 1872, and at other times, prior to the date of
the mortgage hereinafter mentioned & possessed, & is now possessed of the power, right, privilege, & franchise (among others) of constructing, maintaining, operating, & using certain railroads in the States of Illinois, Indiana, Kentucky, and Tennessee, & especially of a certain railroad in the State of Tennessee, extending from the city of Nashville, northerly to the State line, between the States of Kentucky and Tennessee, all of which railroads are more particularly described in the mortgage or deed of trust hereinafter referred to, & that the said company has its office & principal place of transacting its business in the State of Tennessee, at Nashville, in the said State, & as your orators are advised & believe the said corporation is a citizen of the State of Tennessee, within the meaning of the Constitution & laws of the United States relating to the
jurisdiction of this honorable court.

23 And your orators further show unto your honors that the said
corporation, the St. Louis and Southeastern Railway Company (consolidated) after its organization became possessed of its said railroads as aforesaid & has operated & extended the same, & especially its railroad in the State of Tennessee from the city of Nashville northerly, to the State line between the States of Kentucky & Tennessee, & as such corporation is now in possession of the same & in the receipt of the rents, issues, and profits therefrom derived.

And your orators further show unto your honors that on or about the 1st day of October, 1872, the board of directors of said company in pursuance of the power & authority in them by law vested, adopted resolutions to make its bonds as hereinafter mentioned, & to secure the same by the trust deed or mortgage known as its first consolidated mortgage to your orators.

And your orators further show unto your honors that afterwards
24 the said St. Louis and Southeastern Railway Company (consoli-
dated) made its certain trust deed dated October 1st, 1872, in the nature of a mortgage between the said company as party of the first part, & your orators as parties of the second part, & which deed was duly sealed with the corporate or common seal of the said company, & subscribed by the president & secretary of the said company & duly acknowledged by the same & delivered it unto your orators, a copy of which deed of trust or mortgage is hereto annexed & marked "Schedule A," & which mortgage your orators pray may be taken & received as a part of this their bill of complaint.

And your orators further show unto your honors that the said mortgage was duly recorded in the several counties of the States of Illinois, Indiana, Kentucky, & Tennessee, in which the property covered by said mortgage
is situated, prior to the 1st day of November, 1872.

25 And your orators further show unto your honors that the St.
Louis and Southeastern Railway Company (consolidated) made its several negotiable bonds in the form mentioned in the said trust deed or

mortgage, & sealed the same with the common or corporate seal of the said company, & caused the names of its president & secretary to be thereto affixed, each of which bonds was for the payment of the principal sum of money therein mentioned in United States gold coin at par, to the holder of the said bonds thirty years from the date thereof, with interest thereon from date, at the rate of seven per cent. per annum payable semi-annually in gold coin as aforesaid, free of all United States Government tax, on the first days of Feb'y and August in each year upon presentation of the respective coupons thereto annexed.

And your orators further show unto your honors that interest warrants
or coupons for the payment of said interest, at the times above men-
26 tioned were annexed to each of said bonds, and that the said bonds
amounted in the aggregate to about nine millions five hundred
thousand dollars ($9,500,000), of which about four millions five hundred
thousand were placed in trust to exchange for prior liens.

And your orators further show unto your honors that all of said bonds which, by the provision of the said bonds, were not to become valid or obligatory until authenticated by certificate endorsed thereon & duly signed by your orators as trustees, were afterwards and on or about the date thereof authenticated by a certificate endorsed thereon & duly signed by your orators as such trustees.

And your orators further show unto your honors that the said St. Louis
and Southeastern Railway Company, (consolidated) at divers times, sold, is-
sued & delivered the said bonds secured by the said mortgage or deed
27 of trust to a large number of individuals, partnership firms, and cor-
porate bodies, who thereupon & thereby became the holders & bearers
of the said bonds & entitled to the moneys therein mentioned & agreed
to be paid, and that the bonds so made, sold, & delivered amounted in the
aggregate to the sum of about five millions of dollars of principal money
or thereabouts, and that they have come by transfer & delivery into the
hands of a large number of persons, some of whom are unknown to your
orators, & are too numerous to be made parties to this action.

And your orators further show unto your honors that on the 1st day of
Feb'y, 1874, the said St. Louis & Southeastern Railway Company (con-
solidated) utterly failed & made default in the payment of the interest,
interest warrants or coupons which became due on that day, & that the
said company has never paid the whole, or any part of the said moneys,
which, according to the tenor & effect of the said bonds & of the said
interest warrants or coupons, should have been paid on that day,
28 & ever since the first day of February, 1874, the amount of inter-
est in arrear & unpaid on said bonds has been the sum of eighty
thousand dollars & upwards.

And your orators further show unto your honors that the said Nashville, Chicago and St. Louis Railroad Company have, or claim to have, some interest in or lien upon the mortgaged premises, or some portion thereof, which interest or lien, if any, has accrued subsequently to the lien of the aforesaid mortgage.

And your orators further show unto your honors that your orators claim that by the force & effect of the aforesaid mortgage or deed of trust, bearing date the first day of October, 1872, all of the property of the said defendant, the St. Louis and Southeastern Railway Company (consolidated), described in the said mortgage, is subject to the lien of said mortgage prior to the liens or claims of any of the other parties thereto.

29 And your orators further show unto your honors that no proceedings at law have been had, nor any suit or action commenced by or on behalf of your orators or any holder of the bonds of said company secured by the mortgage aforesaid, for any interest unpaid or accrued thereon, except only this action.

In consideration whereof, & forasmuch as your orators are remediless in the premises, at & by the strict rules of the common law, & are only rel’iable in a court of equity where matters of this kind are properly cognizable & reli’able.

Your orators therefore pray the aid of this honorable court & that the said mortgage or deed of trust may be decreed to be a lien upon all the property, railroads, branches, extensions, & leased lines of the said St. Louis and Southeastern Railway Company (consolidated), described in the said mortgage or deed of trust, within the jurisdiction of this honorable court, & that the St. Louis and Southeastern Railway Company
30 (consolidated) may be decreed to pay unto your orators & the other bondholders under the aforesaid mortgage or deed of trust, all arrears of interest now due, or that may hereafter become due & payable upon said bonds, together with all the costs & expenses in this behalf incurred & expended. And in default thereof, that the said defendants above named, & all persons claiming under them or either of them, may be forever barred & foreclosed of & from all equity of redemption & claim of, in, & to the said mortgaged premises, & every part & parcel thereof, & that all & singular the said mortgaged premises within the jurisdiction of the honorable court, with the appurtenances, property, & effects, rights, immunities & franchises in the said mortgage mentioned, may be sold under a decree of this honorable court, & that out of the money arising from the sale thereof, after deducting from the proceeds of any such sale, just al-
31 lowances for all such disbursements & expenses of the said sale, including attorneys & counsel fees & other expenses, advances or liabilities, which may have been made or incurred by the said trustees in operating & maintaining the said railroad, or in managing its business, while in possession, & all payments which may have been made by them for taxes or assessments on the said premises, or any part thereof, as well as compensation for their own services, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have previously become due, & of the interest which shall at that time have accrued on the said principal & accrued unpaid interest, & if after satisfaction thereof a surplus of the said proceeds shall remain to pay over the same to the said St. Louis and Southeastern Railway Company (consolidated), or to whomsoever may be
32 lawfully or equitably entitled to receive the same, or as this court may direct.

And your orators further pray that an account may be taken of the bonds secured by the said mortgage to you orators, & of the amount due on said bonds for principal & interest, or either, & that the names of the lawful holders thereof may be ascertained, & that your orators, as trustees as aforesaid, may be let into possession of the said railroad, & its branches, & the income, tolls, & profits of the same, & also of the depots, & machine shops, station houses, and other real estate, & all rolling stock, equipments, & appurtenances connected with or forming part of the said railroad, & branches, & also all other property included in & conveyed by the said mortgage.

And your orators further pray that a receiver may be appointed accord-
ing to the course & practice of this court, with the usual powers of receivers
in like cases of all the property, equitable interests, things in action,
33 effects, money, receipts, & earnings, rights, privileges, franchises, &
immunities of the said railroad company, & of all other property in-
cluded in & covered by the said mortgage within the jurisdiction of this
honorable court.

And your orators further pray that a writ of injunction issue out of
this & under the seal of this honorable court, or issued by one of your
honors according to the form of the statute in such cases made & provided,
directing, commanding, enjoining & restraining the said defendants, & each &
every one of them from interfering with, transferring, selling, or disposing of
any of the property mentioned in & covered by the said mortgage, or from
taking possession of, levying upon, or attempting to sell, either by judicial
process or otherwise, any portion of the property embraced in or covered
by the said mortgage, and that your orators may have such further & other
relief in the premises as the nature of the circumstances of this case
34 may require, & to this honorable court shall seem meet. And may
it please your honors to grant unto your orators a writ of injunc-
tion, issuing out of & under the seal of this honorable court, or issued
by one of your honors, according to the form of the statute in such case
made & provided, directing, commanding, enjoining, & restraining the said
defendants, & each & every one of them, from interfering with, transferring,
selling, any of or disposing of the property mentioned in or covered by the
said mortgage, or from taking possession of, levying upon, or attempting to
sell, either by judicial process or otherwise, any portion of the property
embraced in or covered by the said mortgage.

And may it please your honors to grant unto your orators a subpœna of
the United States of America, issuing out of, & under the seal of this
honorable court, directed to the St. Louis and Southeastern Railway
35 Company, (consolidated the Nashville, Chicago and St. Louis
Railroad Company, the defendants respectively, therein & thereby
commanding them,) on a certain day therein to be named, & under a cer-
tain penalty, to be & appear before this honorable court, then & there to
answer all & singular the premises, & to stand to, perform, & abide by
the said order, direction, & decree, as may be made against them in the
premises, as shall seem meet & and agreeable to equity & good conscience.

And as to the several persons who are properly parties defendant to this bill of complaint, & who are not citizens of the State of Tennessee, & who may be out of the jurisdiction of this court, your orators pray that process may be issued to make them parties if they should come within such jurisdiction, or that such proceedings may be had in regard to such parties defendant according to the form of the statute in such case made & provided.

And your orators, as in duty bound, will ever pray, &c.

36 DEMOSS & MALONE,
Solicitors for Complainants.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

George Opdyke, being duly sworn, doth depose & say, that he is one of the complainants in the foregoing bill named, & has read the same & knows the contents thereof, & that the said bill is true of his own knowledge, except as to those matters which are therein stated to be on his information & belief, & as to these he believes it to be true.

GEORGE OPDYKE.

Sworn to before me this 21st day of October, 1874.

R. A. PIPER.
Notary Public, N. Y.

37 SCHEDULE A.

This indenture made the first day of October, A. D. 1872, by and between the St. Louis and Southeastern Railway Company (consolidated), a corporation formed and existing under and by virtue of the laws of the States of Illinois, Indiana, Kentucky, and Tennessee, party of the first part, and George Opdyke and Philo C. Calhoun, of the city, county, and State of New York, trustees, parties of the second part, witnesseth:

Whereas the St. Louis and Southeastern Railway Company, a corporation created under the laws of the State of Illinois, by successive consolidations has become united, associated, amalgamated, and consolidated with the Evansville and Southern Illinois Railroad Company, a corporation created under the laws of the State of Illinois, the Evansville, Carmi and Paducah Railroad Company, a corporation created under the laws of the State of Indiana, the Evansville, Henderson and Nashville Railroad Company, a corporation created under the laws of the State of Kentucky, the Nashville, Chicago and St. Louis Railroad Company, a corporation created under the laws of the State of Tennessee, and the St. Louis and Southeastern Railway Company (Kentucky division), a corporation
38 created under the laws of the State of Kentucky, under the name of the St. Louis and Southeastern Railway Company (consolidated), being the party hereto of the first part.

And whereas, the said party of the first part has become possessed of and owns and holds the railways of the aforesaid several companies, built and to be built, extending from East St. Louis, through the States of Illinois and Indiana, to the cities of Evansville and Shawneetown, on the Ohio River, and also extending from the city of Henderson, and from the vicinity of Shawneetown, on the Ohio River, to the State line, between the States of Kentucky and Tennessee, and also extending from the northerly State line of Tennessee, to the city of Nashville, embracing about four hundred miles of railway; and also of all branches and extensions of the said several railways, and of all the franchises and property of the said several companies, with power to mortgage the same with all other property and franchises acquired, and to be acquired by it for the purpose of securing bonds issued by it.

And whereas, for the purpose of more fully funding the indebt-
39 edness of the aforesaid several corporations, and of discharging all liens upon the property of the said several companies, and of pro-

viding for the completion of all unfinished portions of the said railways, and of providing a fuller equipment of the said railroads and railways, and of other legitimate expenditures of the said party of the first part, it has been duly and legally resolved to borrow money by means of mortgage bonds, and to issue and sell such bonds to an amount not exceeding the rate of twenty-one thousand dollars per mile of track of its railways, which bonds should be secured by a mortgage or deed of trust in the terms hereof conveying all the property and franchises of the said party of the first part, and of the said several corporations to the parties hereto of the second part in trust for that purpose, and that such bonds should be substantially in manner and form as follows, that is to say:

UNITED STATES OF AMERICA.

STATES OF ILLINOIS, INDIANA, KENTUCKY AND TENNESSEE,

First consolidated mortgage bond.

Seven per cent., thirty-year sinking fund gold loan.

(Free from United States taxes.)

The St. Louis and South Eastern Railway Company (consoli-
40 dated), hereby acknowledges itself indebted to George Opdyke &
Company, or bearer, in the sum of one thousand dollars, which sum it promises to pay to the holder hereof, in gold coin of the United States (equal to the present standard), on the first day of November, in the year 1902, at its office or agency, in the city of New York, with interest thereon at the rate of seven per centum per annum, on the first days of February and August in each year, on the surrender of the annexed coupons as they severally fall due, such interest to be payable at its office or agency, either in New York in United States gold coin, or in Amsterdam, Berlin, or Frankfort-on-the-Main, at the option of the holder, in the currency of the respective countries as specified in the annexed coupon.

In case of default for the period of four months in the payment of interest upon this bond, the principal of bond shall thereupon become due and payable in the manner with the effect provided in the deed of trust hereinafter mentioned.

This bond is one of a series of bonds issued, and to be issued, to an
amount not exceeding the amount of twenty-one thousand dollars
41 per mile of track of railroad of the said company, as fully set forth
in the deed of trust hereinafter named; all of which bonds are of like tenor herewith, except in amount, and in time of payment of interest.

The payment of the said series of bonds is secured by a trust deed or mortgage of even date herewith made by the said St. Louis & Southeastern Railway Company (consolidated) to George Opdyke and Philo. C. Calhoun, of New York, as trustees, and conveying to such trustees, among other things, the entire railways of the said company from East St. Louis, in the State of Illinois, and running through the States of Illinois, Indiana, Kentucky, and Tennessee to the city of Nashville, now including, with its branches, a total length of about 420 miles, together with the franchises, privileges, tolls, income, property, and profits of the said company. The payment of the principal of this bond is moreover secured by provisions in the said deed of trust for a sinking fund, to commence on October 1st, 1873, the annual contributions, to which are to be equal to ten and one-half per centum of the gross earnings of the said company for the current year, and this bond is redeemable by said sinking fund in the manner declared in the said deed.

42 Suffic'nt bonds of this issue having been deposited in trust to secure all issues of bonds of the companies by the consolidation of which this company was formed, this series of consolidated bonds represents the only and entire funded debt of the St. Louis and Southeastern Railway Company (consolidated). This bond shall not become obligatory until authenticated by signatures of the trustees.

In testimony whereof the said company has caused its corporate seal to be hereto affixed, and these presents to be executed by its president, and attested by its secretary, this first day of October, A. D. 1872.

THE ST. LOUIS AND SOUTHEASTERN
RAILROAD C'MP'NY (CONSOLIDATED.)

Attest:

, *President.*

, *Secretary.*

Coupon.

On the day of , the St. Louis and Southeastern Railway Company (consolidated) will pay to the bearer, in the city of New York, thirty-five dollars, United States gold coin, or in Amsterdam eighty-seven $\frac{50}{100}$ florins, or in Berlin fifty thalers, or in Frankfort-on-the-Main eighty-seven florins and thirty kreutzers, free of United States Government tax, being six months' interest on bond No. .

, *Secretary.*

43 It being understood, however, that the board of trustees may have any of the said bonds, or their coupons stamped with words and devices, indicating that intere't therein is payable on such bonds only in the city of New York, and that after such stamping such interest shall be payable only in the city of New York.

And that such bonds should have the following endorsement placed on the back thereof:

This bond may be registered in the owner's name on the comp'ny's books in the city of New York, or at any other place which the company may determine, such registry being noted on the bond by the company's transfer agent, after which no transfer shall be valid unless made on the company's books by the registered owner, and similarly noted on the bond, but the same may be discharged from registry by being transferred to bearer, after which it shall be transferrable by delivery, but it may be again registered as before. "The registry of the bond, as above, shall not restrain the negotiability of the coupons by delivery merely, but the coupons may be surrendered, and the interest made payable on to the registered

owner of the bond." It being understood, however, that upon a
44 portion of such bonds interest shall be made payable on the first
days of May and November in each year, and that a portion of
such bonds may be for the sum of five hundred dollars only, in which case
the coupons shall be for one half of the amounts above stated.

And that such bonds should be duly executed by and under the seal of the party of the first part, signed and attested by its president and secretary, and the coupons authenticated by or with the name of the said secretary.

And that such bonds should, after such execution, be delivered to the said parties of the second part, who shall, within the terms hereof, sign the following certificate:

"We hereby certify that this bond is one of a series secured by a deed of trust executed by the St. Louis and Southeastern Railway Company (consolidated) to us, as trustees, dated 1st October, 1872, purporting to convey to us, as trustees, for the holders of such bonds, all the property, franchises, privileges, tolls, income, and profits of the said company, especially its railways from East St. Louis to Nashville, and that by the terms of
the said deed of trust the said bonds are not to be issued at a rate
45 exceeding twenty-one thousand dollars per mile, as stated in the said
bond, and that the deed of trust has been recorded in all the counties through which the said railway passes.

"*Trustees.*"

And that such certificate upon each bond so signed by the trustees shall be sole and conclusive proof that the said bond is secured by this indenture.

And whereas it was further resolved by the said party of the first part that of the bonds to be issued as aforesaid there should be reserved and placed in trust a sufficient number to be exchanged at par, of all the outstanding bonds issued by the several corporation, consolidated into and amalgamated with the party of the first part, to the end that the total amount of first-mortgage bonds upon the railway and property of the party of the first part should not exceed the amount of twenty-one thousand dollars per mile of track of its railways, estimating sidings, side-track, and switches as additional track:

Now, therefore, this indenture witnesseth that the party of the first part, in consideration of the premises, and of one dollar, to wit, in hand paid,
the receipt whereof is hereby acknowledged, and in order to secure
46 the payment of the principal and interest of the bonds aforesaid,
issued or to be issued as herein recited and provided, and every part
of the said principal and interest as the same shall become payable, according to the tenor of the said bonds and of the coupons or interest warrants hereto attached, has granted, bargained, and sold, assigned, set over, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, transfer, assign, set over, release, convey, and confirm unto the parties of the second part all the railways of the said party of the first part in the States of Illinois, Indiana, Kentucky, and Tennessee, forming a continuous line from East St. Louis, in the State of Illinois, through the city of Evansville, in the State of Indiana, and the city of Henderson, in

the State of Kentucky, and also a line through the city of Shawneetown, in the State of Illinois, in each case to the city of Nashville, in the State of Tennessee, which railways are more particularly described as follows:

Beginning at East St. Louis, in the county of St. Clair, in the State of Illinois, and thence running by way of Belleville, Mascoutah, Nashville, Ashley, and Mount Vernon to McLeansboro', in the county of Hamilton, State of
47 Illinois; and thence one line of said railway running by the way of
Equality to Shawneetown, in the county of Gallatin, State of Illinois, and another line running from McLeansboro' aforesaid by the way of Carmi to a point on the Wabash River, in the county of White, State of Illinois; thence running over the bridge erected by the party of the first part over the Wabash River to a point in the county of Posey, State of Indiana, and by the way of Mount Vernon, in the county of Posey, State of Indiana, to a point on the northerly side of the Ohio River, in or near the city of Evansville, in the county of Vanderburgh, State of Indiana; thence connecting by means of a ferry or bridge across the Ohio River; with a point on the southerly side of the Ohio River in or near the city of Henderson, in the county of Henderson, State of Kentucky; thence running by the way of Madisonville and Hopkinsville, in the State of Kentucky, to a point on the southerly line of the said State and northerly line of the State of Tennessee, near Guthrie, in the State of Kentucky; thence running by the way of Springfield to the Edgefield junction, and thence by the way of Edgefield, in the State of Tennessee, over a line of railway owned and operated in common by the said party of the first part and by the
48 Louisville & Nashville Railroad Company, to the city of Nashville,
in the State of Tennessee, and also running by another line of railway from a point on the southerly side of the Ohio River, at or near Caseyville, or in the vicinity of Shawneetown, in the county of Union, and State of Kentucky, to Madisonville aforesaid, in the county of Hopkins, State of Kentucky, and there connecting with the above-described line of railway; the said railways being located within and passing through the counties of St. Clair, Clinton, Washington, Jefferson, Hamilton, White, Saline, and Gal'atin, in the State of Illinois, and the counties of Posey and Vanderburgh, in the State of Indiana, and the counties of Union, Webster, Henderson, Hopkins, Todd, and Christian, in the State of Kentucky, and the counties of Robertson and Davidson, in the State of Tennessee, and also the O'Fallon Branch, so-called, in the said county of St. Clair, State of Illinois, and all branches and extensions of the said railways and all other railways connected with the said railways in a continuous line, now or hereafter built, purchased, owned, or in any way acquired by the said party of the first part, and also all bridges now owned or hereafter
49 erected by the said party of the first part, excepting such bridges
across the Ohio River as it may erect or purchase; and also all the railroad, right of way, depot grounds, land, all depots, station-houses, engine-houses, car-houses, freight-houses, grain-houses, wood-houses, coal-houses, or other buildings, and all fences, trestles, and culverts appertaining to the railways above conveyed, and all car-shops and machine-shops; also all kinds of machinery and tools now held or hereafter to be acquired for use in connection with the said railway, including all locomotives, tenders, cars, or other rolling-stock and equipment, and all impliments, fuel, and materials for the construction, operating, repairing, or replacing the

said railways, or any of the said branches, and also all franchises and property now or heretofore belonging or appertaining to the corporations united in the consolidation aforesaid of the party of the first part, together with all and singular the tenements and appurtenances thereunto belonging, and the reservations, remainders, tolls, incomes, rents, issues, and profits thereof, and also all the estates, rights, titles, and interests whatsoever, as well at
law as in equity, of the said party of the first part, of, in, and to the
50 same: To have and to hold all and singular the premises, right,
franchises, property, real and personal, aforesaid, with the appurtenances, unto the said George Opdyke and Philo C. Calhoun, the parties of the second part, and the survivor of them, and his and their successor or successors in the trust, and assigns—in trust, however, for the person or persons, firm or firms, and bodies politic or corporate, who have heretofore or shall hereafter at any time become and be from time to time the purchasers or holders or owners of the said bonds, or any or either of them, and for the purposes and on the conditions herein expressed, subject, however, to the possession and management of said railways and property, including rents, incomes, issues, and profits aforesaid, by said party of the first part, its successors or assigns, so long as no default shall be made in the payment of either principal or interest of the bonds, or any of them, and so long as said party of the first part shall well and truly observe, keep, and perform all and singular the covenants and conditions in said bonds and in this indenture expressed to be observed, kept, or performed by or
on behalf of said party of the first part.

51 And it is declared that the trusts, uses, purposes, and conditions
upon which the premises, rights, franchises, and property, real and personal, aforesaid are conveyed to, and are to be had, held, and disposed of by the said parties of the second part are as follows, that is to say:

ARTICLE 1. The party of the first part shall make and execute, and the trustees, parties of the second part, shall certify or countersign of the bonds to be secured hereby an aggregate amount equal to the amount of twenty-one thousand dollars per mile of track of the railway or railways of the party of the first part hereby conveyed, and no greater amount of such bonds shall be issued by the party of the first part or countersigned by the said trustees; and it is expressly understood and agreed that in estimating the length of track of said railway or railroads the length of all sidings, side tracks, and switches shall be included as additional length of track.

ARTICLE 2. Upon the execution and delivery of these presents the party of the first part shall make and execute, and the parties of the second
part shall certify or countersign, pursuant to the provisions of this
52 indenture, a number and amount at par of the bonds intended to
be secured hereby equal to the amount at par of all outstanding bonds secured by mortgage upon the railways of the several companies which have been associated or consolidated with and into the party of the first part, and also a further amount of four hundred and fifty thousand dollars at par of the said bonds, and these bonds, so executed and certified, shall be retained in the possession of the parties *of the parties* of the second part, and shall be held by them, or by such corporation or persons as may from time to time be agreed upon by and between the parties of the first and second part, in trust, solely for the following purposes, viz:

The said amount of four hundred and fifty thousand dollars of bonds to be used only for the purpose of discharging the indebtedness to the State of Tennessee, which constitutes a lien on the portion of the said railways hereby mortgaged, lying in the State of Tennessee, and the remainder of said bonds for the purpose of receiving in exchange therefor the aforesaid outstanding prior bonds in the manner following:

Upon the presentation by any person or persons or bodies corporate
53 to the said trustees of any of the said outstanding bonds, amounting, at
par to any number of even thousands of dollars, it shall be the duty of the said trustees to exchange for said bonds, at the par value thereof, the bonds of this issue, at par, using such portions of the bonds so retained by said parties of the second part as shall be required for that purpose, and upon causing the said outstanding bonds to be assigned to the said parties of the second part, in trust for the benefit of the holders of the bonds secured hereby; provided, however, no holder of any of the aforesaid outstanding bonds shall have a right to require exchange, unless the board of trustees of the party of the first part shall, by a resolution then in force, have requested the said trustees to make such exchange; and further provided that every bond secured hereby which shall be issued as above provided in exchange for any outstanding prior bond shall, before it shall become binding on the party of the first part, or shall become negotiable by delivery or registration, have endorsed thereon a certificate signed by such person as the president of the party of the first part, acting with the said trustees, shall
from time to time appoint for that purpose, with the designation of
54 "Exchange agent;" which certificate shall be in the following
words, to wit:

"This is to certify that the within bond has been issued in exchange for bond No. of the company, which bond has been deliv'ed to the trustees.

"Dated at , the day of , 18 .

"Exchange Agent."

It is expressly understood that no more of the bonds intended to be secured hereby shall be executed by the party of the first part or certified by the parties of the second part until sufficie't bonds are so as above reserved to be exchanged at par for all outstanding bonds issued by either of the said corporations associated, united, or consolidated with and into the party of the first part and secured by mortgage, remaining a lien of record upon some portion of the property hereby conveyed, and also a sufficie't number to discharge all of the liens on such railways. It is further understood that in case of the acquisition of the party of the first part by purchase, consolidation, or otherwise of any additional railway or property subject to mortgage or to other liens securing a funded debt, like
provision shall be made and observed for the exchange of such out-
55 standing debt at par by deposit of the issue of bonds authorized
hereby before any further issue of bonds shall be made hereunder for the additional mileage of track so obtained; and the party of the first part agrees that upon the exchange as aforesaid of all outstanding prior bonds it will by agreement with the trustees named in the mortgage securing such prior bonds, provided that all the benefits of the lien thereof

shall be secured to the parties hereto of the second part in trust for the holders of the bonds secured hereby.

ARTICLE 3. In case that any of the said outstanding prior bonds shall not have been so as above exchanged before one year prior to their maturity, then it shall be the duty of said trustees to sell an equal amount of the bonds secured hereby and deposit with them, and use the proceeds of the same to procure the exchange or retiring of such outstanding bonds at maturity. And upon the payment, redemption, or exchange of all of said outstanding bonds, and the discharge of the aforesaid lien of the State of Tennessee, the said trustees shall account with the party of the first
56 part for the said bonds secured hereby, or the proceeds thereof if sold, and pay over to the said party of the first part any portion of the same not necessarily or legitimately used under the aforesaid trust.

ARTICLE 4. And it is expressly covenanted and agreed by the party of the first part that in addition to the interest provided to be paid in and by said bonds, it will deposit with the said trustees, parties of the second part, a sum equal to two and one-half per centum of the gross earnings for the year terminating on the 1st day of October then last past of the railways and property of the party the first part hereby conveyed and mortgaged, commencing on the 1st day of November, A. D. 1874, and depositing the like amount of two and one-half per centum of such earnings annually, on the 1st day of November in each and every year until said bonds become due, to be a sinking fund for the ultimate payment of said bonds.

ARTICLE 5. That on or before the first day of November in each year, beginning with the year 1874, and continuing until the payment of all of the bonds issued hereunder, the said trustees, parties of the second
57 part, shall either publicly buy, at prices not exceeding par, and after proper advertisement for proposals, or shall select by lot, in the presence of a notary public, from the whole number of the outstanding bonds secured hereby a number of such bonds, as nearly as possible equal to the amount of money in their hands, from the annual payment for the year ending October 31st then last past, for the sinking fund herein provided, a certificate of which selection shall thereupon be made in duplicate by the said notary public under his seal of office, and one of such certificates shall be thereupon delivered by the said trustees to the said party of the first part, and the other retained by such trustees, who shall forthwith proceed to advertise the contents of such certificate twice a week, in one or more daily newspapers of general circulation in the city of New York and in the city of Frankfort-on-the-Main, Amsterdam, and Berlin, with a notice that the bonds of the numbers so selected will be redeemed by them, the said trustees, the parties of the second part, on the first day of January next ensuing, at a place named in the city of New York, and on presentation *at* such at the time so named, or at any
58 time thereafter, the said trustees, parties of the second part, shall so redeem the said bonds (it being expressly understood, however, that to the holder of any bond so selected interest thereon shall cease from and after the first day of January).

And the said party of the first part shall, upon such redemption, cause to be made upon all the bonds so redeemed by it, such endorsement as shall destroy the negotiability thereof, and at all times after said 1st January shall pay to said trustees the interest upon such bonds as it shall accrue, which interest shall be received and credited by the said trustees, parties of the second part, to the account of the sinking fund hereinbefore mentioned. The amounts so received shall be used solely for the redemption of bonds, as hereinbefore specified.

ARTICLE 6. Until default shall be made in the payment of principal or interest of the said bonds, or some of them, or until default shall be made in respect to something by these presents required to be done, observed, performed or kept, by the party of the first part, the said party of the
first part shall be suffered and permitted to possess, manage, oper-
59 ate, and enjoy the said hereinbefore-described franchises, property,
and railways, and every part thereof, with the equipments thereof,
and the appurtenances thereto belonging, and to make and use the tolls, incomes, rents, issues, and profits thereof in the same manner, and with the same effect as if this deed had not been made.

ARTICLE 7. If the party of the first part shall well and truly pay the principal of the said bonds, and every of them, and all interest thereon when the same shall become payable, according to the tenor of the said bonds, and the coupons issued therewith, and shall well and truly observe, perform, and keep all and singular the several things herein required to be by it performed or kept, according to the true intent and meaning of these presents, then, and in that case, all the estate, right, title, and interest of the said parties of the second part, the survivors of them, and their or his successor or successors in the trust hereby created, shall cease, determine, and become void, otherwise the same shall be and remain in full force and virtue.

ARTICLE 8. In case default shall be made in the payment of any interest
on any of the aforesaid bonds issued, or to be issued, according to
60 the tenor thereof, or of the coupons thereto annexed, or in any re-
quirement to be done or kept by the party of the first part, and in
case such default shall continue for the period of four months, it shall be lawful for the said trustees, the parties of the second part, personally or by their or his attorney or agent, to enter into or upon all and singular the railroad and premises hereby conveyed or intended so to be conveyed, and each and every part thereof, and to have, hold, and use the same, operating by their superintendents, managers, receivers, or servants, or other attorney or agent, the said railroad, and conducting the business thereof and making from time to time all repairs and replacements, and such useful alterations, additions, and improve'nts thereto as may seem to them to be judicious, and collect and receive all tolls, freights, incomes, rents, issues, and profits of the same, and of every part thereof; and after deducting the expenses of operating the said railroad and conducting its business, and of all the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made for taxes, assessments,
charges, or liens prior to the lien of these presents upon the said
61 railroad and premises, or any part thereof, to apply the moneys
arising as aforesaid to the payment of interest upon said bonds,
in the order in which such interest shall have become or shall become due ratably to the persons holding the coupons evidencing the right to such interest, and after paying all interest which shall have become due, to apply the same to the satisfaction of the principal of the said bonds which

may be at that time due and unpaid, ratably, and without discrimination or preference.

ARTICLE 9. In case default shall be made as aforesaid, or in case default shall be made in the payment of the principal of any of the said bonds or any part thereof, and in case any such default shall continue for the period of eight months, it shall be lawful for the said trustees, the parties of the second part, after entry, as aforesaid, or other entry, or without entry personally, or by their attorney or agent, to foreclose the equity of redemption to the property hereby conveyed by judicial intervention or legal proceedings, or to sell and dispose of all and singular, the railways and premises hereby conveyed, or intended so to be, or of any
62 part of the same, from time to time at public auction, either in the city of New York, or at such place within the State of Illinois, or the State of Indiana, or the State of Kentucky, or the State of Tennessee, as may be designated, and at such time or times as he or they may appoint, having first given notice of the time and place of such sale or sales by advertisement to be published not less than three times a week, for six weeks in one or more newspapers in the cities of New York, St. Louis, Evansville, Louisville, & Nashville, respectively, and wherever else required by law, and to adjourn the said sale or sales from time to time in their discretion, and if so adjourning to make the same at the time and place to which the same may be so adjourned, and upon any such sale to make and deliver to the purchaser or purchasers of the property so sold, good and sufficient deed or deeds in the law for the same, which sale made as aforesaid, shall be a perpetual bar both in law and equity against the party of the first part, and all other persons whomsoever lawfully claiming or to claim the said railroad and premises so sold, or any part thereof, by, from, through, or under it, and after deducting from the proceeds
63 of any such sale just allowances for all disbursments and expenses of the said sale, in including attorneys and counsel fees, and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees in operating and maintaining the said railroad, or in managing its business while in possession, and all payments which may have been made by them for taxes or assessments on the said premises, or any part thereof, as well as compensation for their own services, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, ratably to the aggregate amount of such unpaid principal, and accrued and unpaid interest, and if, after satisfaction thereof, a surplus of the said proceeds shall remain, to pay over the same to the said party of the first part, or to whomsoever may be lawfully or equitably entitled to receive the same, or as some court of competent jurisdiction shall direct.

And it is hereby declared that the receipt of the said trustees shall
64 be a sufficient discharge to the purchaser or purchasers, his or their heirs, executors, administrators, or assigns, shall not after payment thereof, and having such receipts, be liable to see to its being applied upon or for the trusts and purposes of these presents, or in any manner whatsoever be answerable for the trusts and purposes of these presents, or in any manner whatsoever be amenable for any loss, misapplication, or non-

application of such purchase-money, or any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale.

ARTICLE 10. In case default shall be made in the payment of any of the said coupons, or semi-annual interest upon any of the aforesaid bonds, at the time and in the manner in the coupons issued therewith, provided the said coupon has been presented and the payment of the interest therein specified has been demanded, and in case such default shall continue for the period of four months after the said coupon shall have become due and payable, then and thereupon the principal of all the bonds secured hereby shall, at the election of the trustees, the parties of the second part, become immediately due and payable, anything contained in the
65 said bonds to the contrary notwithstanding, but a majority in interest of the holders of said bonds may, by an instrum't in writing, signed by such majority before the interest in arrears shall be paid, instruct the trustees to declare the said principal to be due, or to waive the rights so to declare, in such terms and conditions as such majority shall deem proper, or may annul or reverse the election of the trustees, provided that no action of the trustees or bondholders shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom.

ARTICLE 11. The party of the first part shall from time to time, and at all times hereafter, and as often as thereunto requested by the trustees, the parties of the second part, execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law for the better assuring the trustees upon the trusts herein expressed, the said railways, and the equipments and appurtenances hereinbefore mentioned, or intended so to be conveyed, and all franchises now held or thereafter acquired, as by the trustees, or by their counsel learned in the law, shall be reasonably advised, devised, or required.

66 ARTICLE 12. The trustees shall have full power, in their discretion, upon the written request of the party of the first part, to convey, by way of release, or otherwise, to the persons designated by the said company, any lands, acquired in any way, or held for sale, or for the purposes of stations, depot, shops, or other buildings, or which may have been held for a supply of fuel, gravel, or other materials, provided, however, in each case that in the judgment of the trustees such land shall not be necessary for use in connection with the said railways, and also to convey, as aforesaid, in like request, any lands not occupied by the track which may become disused by reason of a change of the location of a station-house, depot, shop, or other building, as the said company may deem it expedient to disuse or abandon, by reason of such change, and to consent to any change, and to such other changes in the location of the track or depot, or other buildings, as in their judgment shall have become exepedi*an*t, and to make and deliver the conveyances necessary to carry the
67 same into effect; but any lands which may be acquired for permanent use in substitution for any so released, shall be conveyed to the trustees, upon the trusts of these presents; and no property shall be released or conveyed, which in the judgment of the said trustees shall be essential or material to the security of the holders of the aforesaid bonds; and the trustees shall also have full power to allow the said company from time to time to dispose of, according to its discretion, such portions of the

equipments, machinery, and imp*li*ments at any time held or acquired for the use of the said railroad, as may have become unfit for use, replacing the same by new, which shall then become subject to the operation of these presents, and which shall be expressly conveyed to said trustees, subject to such operation on their demand.

ARTICLE 13. At any sale of the aforesaid property, or any part thereof, made to enforce the l*ein*e created by these presents, pursuant to the power therein granted, or by judicial authority, the said trustees may bid for and purchase, or cause to be bid for and purchased, the property so sold on be-
half of all the holders of the bonds secured hereby then outstanding,
68 in the proportion of the respective interests of such holders, pro-
vided that if all the property hereby conveyed be sold as aforesaid, the price at which the purchases herein authorized may be made shall not exceed the whole amount of the bonds then outstanding, with the interest accrued thereon, in behalf of which the said purchases shall be made; and if but a portion of the said property shall be sold, it shall be at such price as shall be in the judgment of the trustees reasonable.

ARTICLE 14. It is hereby declared and agreed that it shall be the duty of the trustees, upon proper indemnification against costs and expenses, to execute the power of entry hereby granted, or the power of sale hereby granted, or both, or to take appropriate proceedings in equity or at law to enforce the rights of the bondholders under these presents, upon requisition in writing, as hereinafter specified, viz:

1. If the default be as to the interest or principal of any of the bonds aforesaid, such requisition upon the said trustees shall be by holders of not
less than twenty-five per centum of the said bonds then outstand-
69 ing; and upon such requisition, it shall be the duty of the trustees
to enforce the rights of the bondholders under these presents, by entry, sale, or legal proceedings, as they being advised by counsel, learned in law, shall deem most expedient for the interest of all the holders of the said bonds.

2. If the default shall be in the omission to comply with any other provision herein contained to be performed or kept by the said company, then, and in such case, the requisition shall be by the holders of fifty per centum of the bonds then outstanding. But it is expressly understood that such duty of the trustees shall be at all times subject to the power hereby declared of a majority in interest of the holders of said bonds, by requisition in writing, signed by such majority to instruct the said trustees to waive such default, or upon adequate indemnity, as aforesaid, to enforce their rights by reason thereof, provided that no action of the trustees or bondholders, or both, in waiving such default or otherwise, shall extend to or be taken to affect any subsequent default, or to impair the results ar*r*ising therefrom.

70 ARTICLE 15. It is hereby expressly agreed that in case of the
death, resignition, incapacity, or removal of any or either of the parties of the second part, then the remaining acting, surviving, or competent trustee and the party of the first part, are hereby jointly empowered to elect and appoint by an inst'ment in writing, duly executed by each of such parties, a *a* competent person to fill the vacancy created in manner aforesaid; and that such person so appointed trustee, on his acceptance of

such appointment, shall have and possess and be vested with the same rights and powers as trustee, as he would have had and possessed or been vested with had he been originally made a party of the second part hereto, and shall perform the same duties in all respects; and until such appointment shall be so made in manner aforesaid, and notwithstanding any vacancy as aforesaid, said remaining, surviving, acting, or competent trustee shall have full power and authority to execute each and all the trusts hereby created, and his acts in the premises shall be as legal, valid, and
effectual in all respects, and to all intents and purposes as if the
71 same had been done and performed by both the parties hereto of
the second part.

And if for any reason the said surviving trustee and the party of the first part hereto should fail to unite in the appointment of a trustee, as before required, within the space of thirty days after such vacancy occurs, then and in that case it shall be the duty of the secretary of the company to call a meeting of the bondholders by printed notice, published in two of the public newspapers of the city of New York, calling such meeting of the bondholders to be held in said city, not less than thirty days after the first publication of said notice, for the purpose of filling such vacancy.

At the time and place specified in such notice the holders of said bonds, at such meeting, shall proceed to elect a suitable person to act as such trustee to fill said vacancy, and a majority in interest of said bondholders so attending said meeting, or legally represented thereat, shall be competent to elect a new trustee, and the person so elected shall immediately on such election, and on his acceptance in writing of such trust, become vested
with all the estate, trusts, rights, powers, and duties of the trustee
72 in whose place *place* he shall have been elected. And in case such
appointment shall be made in manner aforesaid, or in case of any election as aforesaid, the said party of the first part hereby covenants to make, execute, and deliver such other or further instruments, deeds, indentures, or assurances as may be necessary to enable the person or persons so appointed or elected to execute the trusts hereby created and declared as fully and perfectly in all respects as he or they could have executed the same if originally made a party or parties of the second part to this indenture.

ARTICLE 16. It is mutually agreed that the term *of* words "trustees" and "said trustees" as used in this indenture shall be held and construed to mean the trustees for the time being, whether all or any be original or new, and whenever a vacancy shall exist, to mean the surviving or continuing trustee, and such trustee shall, during such vacancy, be possessed of and be competent to exercise all powers granted by these presents to the
parties of the second part.

73 Further, that at all times until said bonds shall be fully paid
with the interest due and to grow due thereon, the party of the first part will permit the trustees or their agents, clerks, or attorneys for that purpose to be duly authorized fully to inspect all the books of account of the party of the first part, together with its books, reports, memorandums, or other papers, and to take such extracts therefrom as may be deemed expedient.

ARTICLE 17. It is further agreed that neither of the said trustees shall be answerable for the acts, omissions, or defaults of the other, or of any agent employed by them, nor for anything short of gross negligence or wilful default in the discharge of their duties.

In testimony whereof the said party of the first part has caused these presents to be executed by its president and attested by its secretary, and its corporate seal to be hereunto attached, and the parties of the second part have hereunto set their hands and seals the day and year first above mentioned.

{ SEAL OF COMPANY. } (Signed) SAINT LOUIS & SOUTHEASTERN R'Y CO.,
By EDW'D T. WINSLOW,
President.

CHAS. W. GARDINER,
Secretary.

74 P. C. COLHOUN, [L. S.]
GEORGE OPDYKE, [L. S.]
Trustees.

Answer of defendants.—Filed October 24th, 1874.

The answer of the St. Louis and Southeastern Railway Company (consolidated) and the Nashville, Chicago & St. Louis Railroad Company, to the bill of complaint of Philo C. Calhoun and George Opdyke, trustees.

The said defendants come, by their president, E. F. Winslow, and for answer to so much of the bill of complaint as they are advised it is material for them to answer, say: That it is true that they have made default in the payment of the interest due upon bonds issued by them as alleged in the said bill, and they further say that they are willing that this honorable court shall appoints its receiver in the premises to do and perform such acts as may be proper to protect the interests of their creditors, and as shall be ordered herein by the court.

EDW'D F. WINSLOW,
President of the Company, Defendant.

W. L. GORDON,
Attorney for Defendants.

75 On the 29th day of October, 1874, a bond was filed which is in the words & figures following, to wit:

Know all men by these presents, that we, Jediah F. Alexander, Andrew G. Henry, William S. Smith, Williamson Plant, Abraham McNeill, John S. Denney, and Andrew J. Gullick, are held and firmly bound unto E. R. Campbell, clerk of the circuit court of the United States for the district of Middle Tennessee, and to his successors in office, in the sum of twenty thousand dollars, lawful money, well and truly to be paid to said clerk, or his successors in his office, in trust under the direction of said court in a certain suit in equity now pending therein between Philo C. Calhoun and George Opdyke, trustees, plaintiffs, and the St. Louis and Southeastern Railway Company (consolidated) and the Nashville, Chicago and St. Louis Railway Company, defendants, for the payment whereof, well and truly to be made, we bind ourselves and heirs and representatives firmly by these presents. Sealed with our seals, dated the twenty-sixth day of October, 1874.

76 Whereas, the above bounden Jediah F. Alexander has been appointed a receiver in said suit, by an order of said court, to take effect from the approval and filing of bond, and has accepted said office of receiver: Now, the condition of the above obligation is such that it the said Jediah F. Alexander shall well and truly and faithfully perform and fulfill all the duties of his office as such receiver as in said order required, and shall faithfully and truly account for and apply, under the direction of said court in said suit, all property, money, and effects which shall come to his hand or under his controle as such receiver, without fraud or delay, then the above obligation to be void, otherwise to be and remain of force.

JEDIAH F. ALEXANDER. [SEAL.]
ANDREW G. HENRY. [SEAL.]
WILLIAM S. SMITH. [SEAL.]
WILLIAMSON PLANT. [SEAL.]
ABRAHAM McNEILL. [SEAL.]
JOHN S. DENNY. [SEAL.]
ANDREW J. GULLICH. [SEAL.]

The foregoing bond is appr'v'd by me.

CONNALLY F. TRIGG,
U. S. District Judge.

77 I, Jediah F. Alexander, a receiver appointed in the above-mentioned suit, by an order of court, to take effect from the approval and filing of bond, do hereby accept said office of receiver, and I do solemnly swear that I will honestly, faithfully, and truly perform and fulfill all the duties of said office of receiver to the best of my ability.

JEDIAH T. ALEXANDER.

Sworn to before me this 28th Octo., 1874.

CONNALLY F. TRIGG,
U. S. District Judge.

78 *Amended bill.—Filed December 7th*, 1874.

In the circuit court of the United States for the middle district of Tennessee. In equity.

To the honorable the judges of the circuit court of the United States for the district of Tennessee, in the circuit, sitting in equity.

Humbly complaining, show unto your honors, Philo C. Calhoun and George Opdyke, trustees, as hereinafter mentioned, residents of New York City, in the State of New York, and citizens of said State of New York, who bring this amended bill of complaint against the St. Louis and Southeastern Railway (consolidated), a corporation created and existing under and by virtue of the laws of the State of Tennessee, the Nashville, Chicago and Saint Louis Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Tennessee, and Edward F. Winslow; and thereupon your orators complain and say that under and by virtue of an act of the legislature of the State of Illinois, entitled "An act to incorporate the St. Louis and Southeastern Railway

Company," passed March 10, 1869, there was created in due form
79 of law a body politic and corporate, under the name of the St.
Louis and Southeastern Railway Company, with all the powers, rights, privileges, franchises, and immunities, mentioned in and granted by the said act, and by the general laws of the State of Illinois.

Your orators further show unto your honors that the said Saint Louis and Southeastern Railway Company, on or about the 10th day of March, 1869, and at other times prior to the date of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, and franchise of constructing, maintaining, and using a railroad in the State of Illinois from East St. Louis upon the Mississippi River; thence to Mount Vernon, thence to McLeansboro', thence to Equality, and thence to Shawneetown, on the Ohio River, all in the said State of Illinois, with necessary sidings; and also branches not exceeding ten miles in length; and also the power, right, privilege, and franchise to make, execute, and issue bonds secured by mortgage upon its property and franchises, and the right and franchise to consolidate with other railway or railroad companies within or without the State of Illinois.

And your orators further show unto your honors that the said
80 company, after its organization, commenced the construction of its
said railroad, and continued said work, and put in operation the said railroad as follows: Commencing at a point on the easternly bank of the Mississippi River, opposite to the said city of St. Louis, and known as East St. Louis, in the State of Illinois, through the counties of St. Clair, Clinton, Washington, Jefferson, Hamilton, Saline, and Gallatin, in the State of Illinois, to Shawneetown, upon the northernly bank of the Ohio River, being about one hundred and forty-two miles of road; and also a branch railroad known as the O'Fallon Branch, running from Belleville, in the said county of St. Clair, to O'Fallon, in the same county, and being about six miles in length.

And your orators further show unto your honors that by an act of the legislature of the State of Illinois, entitled "An act to incorporate the Evansville & Southern Illinois Railroad Company," passed the 26th day of March, 1869, there was created in due form of law a body politic and corporate under the name of the Evansville and Southern Railroad Company, with all the powers, rights, privileges, franchises, & immunities mentioned in and granted by the said act and by the general laws of the State of Illinois.

81 And your orators further show unto your honors that the said
Evansville and Southern Illinois Railroad Company, on or about the 26th day of March, 1869, and at other times prior to the date of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, and franchise of constructing, maintaining, and using a railroad in the State of Illinois from the town of McLeansboro', Hamilton County, in the State of Illinois, through the towns of Enfield and Carmi, in White County, Illinois, to the dividing line between the States of Illinois and Indiana or the Big Wabash River. And also the power, right, privilege, and franchise to make, execute, and issue bonds secured by mortgage upon its property and franchises, and the right and franchise to consolidate with other railway or railroad companies within or without the State of Illinois.

And your orators further show unto your honors that the Congress of the United States, by a joint resolution approved July 14, 1870, granted to the said Evansville and Southern Illinois Railroad Company the right to construct a bridge for railroad purposes, and as a public highway, across the Big Wabash River.

82 And your orators further show unto your honors that the said company, after its organization, commenced the construction of its said railroad, and continued said work, and put in operation the said railroad as follows: Commencing from a point in the said town of McLeansboro', in the county of Hamilton and State of Illinois, and running through the towns of Enfield and Carmi, in White County, Illinois, to the dividing line between the States of Indiana and Illinois on the Big Wabash River, and constructed a bridge over the Big Wabash River.

And your orators further show unto your honors that the said St. Louis and Southeastern Railway Company and the said Evansville and Southern Illinois Railroad Company, so incorporated as aforesaid, acting under and by authority of their respective charters and the laws of the State of Illinois, did, on the 21st day of February, A. D. 1871, consolidate, amal'amate, and merge their said corporations into one body corporate, called and named the St. Louis and Southeastern Railroad Company, the said body corporate succeeding to all the rights, privileges, immunities, advantages, franchises, easements, and choses in action of said companies.

83 And your orators further show unto your honors that under and pursuant to the laws of the State of Indiana, and especially under an act of the legislature of the said State, entitled "An act to provide for the incorporation of railroad companies," approved May 11, 1852, and the acts amendatory thereof and supplemental thereto, a corporation was duly formed and incorporated by a compliance with all the requirements of said act, and by virtue of said act, and said compliance became a body corporate under the name of the Evansville, Carmi and Paducah Railroad Company for the purpose, among other things, of constructing and operating a railroad in the State of Indiana, through the counties of Vanderburgh and Posey, in the said State of Indiana, in the general direction of Carmi, in the State of Illinois, to a point on the bank of the Wabash River, which corporation was duly empowered under the laws of the State of Indiana, among other things, to consolidate with any other railroad constructed, or in process of construction, within the State of Indiana, or in any adjoining State, upon such terms as migh' be mutually agreed upon, thereby making one corporation of the two railroads 84 so consolidated, and was also empowered to issue its bonds secured by mortgage upon its railroad, its property, and franchises.

And your orators further shows unto your honors that the said company, after its organization, commenced the construction of its said railroad, and continued said work, and put in operation the said railroad, as follows: Commencing at a point upon the Wabash River, at the easternly end of the aforesaid bridge, over the said river, built by the Evansville and Southern Illinois Railroad Company, and running thence through the said counties of Vanderbergh and Posey to Evansville, on the Ohio River.

And your orators further show unto your honors, that the aforesaid St. Louis and Southeastern Railroad Company, by virtue of the consolidation aforesaid succeeded to the rights and franchises of the said Evansville and

Southern Illinois Railroad Company, and the St. Louis and Southeastern Railroad Company, and poesessed such rights and franchises as fully and completely as the said Evansville and Southern Illinois Railroad Company, and the said St. Louis and Southeastern had and possessed the same.

And your orators further show unto your honors that the aforesaid 85 St. Louis and Southeastern Railway Company and the said *and the said* Evansville, Carmi and Paducah Railroad Company acting under the authority of, and in pursuance of their respective charters and the laws of the States of Indiana and Illinois, did, on the 28th day of February, A. D. 1871, consolidate, amalgamate, and merge their said corporations into one body corporate, called and named the St. Louis and Southeastern Railway Company; the said body corporate succeeding to and thereafter possessing all the rights, privileges, immunities, advantages, franchises, easements, and choses in action of said companies, as fully as such corporations respectively had and possessed the same.

And your orators further show unto your honors, that by an act of the general assembly of the commonwealth of Kentucky, approved January 27, 1867, there was created in due form of law a body politic and corporate, under the name of the Evansville, Hendersonville and Nashville Railroad Company, with all the rights, privileges, franchises, and immunities mentioned in and granted by the said act, and by the several acts of the legislature passed supplementary thereto and amendatory thereof, 86 and by the general laws of the State of Kentucky, and especially by the acts passed by the said general assembly, and entitled as follows:

"An act for the relief of the stockholders of the Evansville, Henderson and Nashville Railroad Company," approved April 19, 1873, "An act to grant and confirm unto the St. Louis and Southeastern Railway Company, (consolidated) the rights, powers, and privileges, franchises, and immunities of the Henderson and Nashville Railroad Company, the Evansville, Henderson and Nashville Railroad Company, and the St. Louis and Southeastern Railway Company (Kentucky division)," approved February 3, 1874, and which acts your orators pray may be taken and received as part of this their bill of complaint.

And your orators further show*s* unto your honors, that the said Evansville, Henderson and Nashville Railroad Company, on or about the 27th day of January, 1867, and at other times prior to the date of the mortgage hereinafter mentioned, became possessed of the power, rights, privileges, and franchise of constructing a railroad from Henderson, on the Ohio River, to the line between the States of Kentucky and Tennessee, in 87 the direction of Nashville, Tennessee, together with franchises, rights, and privileges mentioned in the aforesaid acts.

And your orators further show*s* unto your honors, that among the powers of the said Evansville, Henderson and Nashville Railroad Company, granted to it by the aforesaid acts, was the power to construct, use, and operate a railroad from Henderson southerly to the State line between Kentucky and Tennessee, to carry freights from Henderson to Evansville by steamboat, or by building an additional line of railroad and bridging the Ohio River, and also the right to consolidate its company with other railroad companies, owning other lines of railroad connecting with it directly or by means of intervening lines, whether in or without the State of Kentucky; and also the power to make, issue, and sell bonds secured by mortgage upon its property and franchises.

And your orators further show unto your honors, that the said company, after its organization, commenced the construction of its said railroad, and continued said work, and put in operation the said railroad, as follows: Commencing at a point on the Ohio River, at the city of Henderson, in the county of Henderson and State of Kentucky, and
88 running through the counties of Webster, Hopkins, Todd, and Christian, in said State, to the dividing line between the States of Kentucky and Tennessee, in the direction of Nashville, Tennessee.

And your orators further show unto your honors that by an act of the general assembly of the State of Kentucky, approved Feb'y 18, 1870, there was created in due form of law a body politic and corporate under the name of the Madisonville and Shawneetown Straight Line Railroad Company, with all the rights, privileges, franchises, and immunities mentioned in and granted by the said act, and by the acts amendatory thereof, and by the general laws of the State of Kentucky.

And your orators further show unto your honors that by an act of the general assembly of the commonwealth of Kentucky, passed in 1872, the name of the Madisonville and Shawneetown Straight Line Railroad Company was changed to the St. Louis and Southeastern Railway Company, Kentucky division.

And your orators further show unto your honors that the said St. Louis and Southeastern Railway Company, Kentucky division, on or about the 18th day of February, 1870, and at other times prior to the execution of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, and franchise of constructing, maintaining, and using a railroad in the State of Kentucky from Caseyville, and from the Ohio River,
89 opposite Shawneetown to Madisonville, and also the right and franchise, by the consent of the holders of a majority *and* value of all the stock, to consolidate their company with any other railroad company upon such terms as might be agreed upon; and also the power to make, issue, and sell bonds, secured by mortgage, upon its property and franchises.

And your orators further show unto your honors that the said company, after its organization, commenced the construction of the said railroad in the counties of Union and Webster in the State of Kentucky.

And your orators further show unto your honors that under and in pursuance of an act of the general assembly of the State of Tennessee, passed 13th February, 1852, there was created in due form of law, a body politic and corporate, under the name of the Edgefield and Kentucky Railroad Company, with all the powers, rights, privileges, franchises, and immunities mentioned in and granted by the said act, and by acts amendatory thereof or supplemental thereto, and by the general laws of the State of Tennessee.

And your orators further show unto your honors that on the 13th day of February, 1852, and at other times prior to the execution of the mortgage hereinafter mentioned, the said Edgefield and Kentucky Rail-
90 road Company had authority to build a railway from some point on the northerly side of the Cumberland River, convenient to the city of Nashville, to the Kentucky State line, so as to unite with any Ken-

tucky railroad company running to Henderson, and the power to make, issue, and sell bonds secured by mortgage upon its property and franchises; and by subsequent acts it was authorized to unite with any companies in bridging the Cumberland River and to unite with the Louisville and Nashville Railroad Company in building a common track from Edgefield Junction to Nashville, and south of the Cumberland River, not over ten miles in length.

And your orators further show unto your honors that the said company, after its organization, commenced the construction of its said railroad, and continued said work, and put in operation the said railroad, as follows: Commencing at a point in the city of Nashville, and running through the counties of Davidson and Robertson, in the State of Tennessee, to the Kentucky State line, at a point near Guthrie, in the State of Kentucky.

And your orators further show unto your honors that the State of Tennessee, having advanced money to the said Edgefield and Kentucky Railroad Company, under its general laws, taking a lien therefor upon
91 the property and franchises of the said company in the year 1871,
foreclosed its lien, and obtained from the court of chancery of the State of Tennessee, for the county of Davidson, a decree of foreclosure and sale, made on the day of , 18 , under which decree there was had a sale of such property to the county of Davidson and others; that by the terms of the decree, and of the laws of the State of Tennessee, the purchaser at the foreclosure sale succeeded to all the franchises and rights of the Edgefield and Kentucky Railroad Company, and was authorized to apply to the court of chancery for the county of Davidson, Tennessee, for a decree making such substitution and granting such new powers as should be desired; that subsequently, by means of several mesne conveyances Edward F. Winslow became the purchaser and owner of the aforesaid railroad; that on application having been made to the aforesaid court of chancery a decree of such court was duly made upon the 1st day of April, 1872, vesting all the franchises of the Edgefield and Kentucky Railroad Company, its stock and property, in the purchasers of the railroad, changing the name of the company to that of the Nashville, Chicago and St.
Louis Railroad Company, and giving full power to merge and con-
92 solidate the road, property, and franchises of the company with
those of any other company, whether within or without the State of Tennessee, with which it should be connected directly or by means of intervening lines, on such terms and conditions as should be agreed upon by the consolidating companies; that on the 2nd day of September, 1872, a further decree was made by the said court of chancery, confirming and extending the said powers, which decrees your orators pray may be taken as a part of this bill of complaint.

And your orators further show unto your honors that afterwards the said Nashville, Chicago and St. Louis Railroad Company made its certain trust-deed, dated September 26, 1872, in the nature of a mortgage, between the said company as party of the first part, and Edward F. Winslow as party of the second part, and which deed was duly sealed with the corporate or common seal of the said company, and subscribed by the president and secretary of the said company, and duly acknowledged by the same, and delivered it unto said Edward F. Winslow, a copy of which deed of trust or mortgage is hereto annexed and marked Schedule A, and which mortgage your orators pray may be taken and received as a part of this their bill of complaint.

93 And your orators further show unto your honors that the said mortgage was duly recorded in the counties of Davidson and Robertson, in the State of Tennessee, in which the property covered by said mortgage is situated.

And your orators further show unto your honors that the said Nashville, Chicago and St. Louis Railroad Company made its bond in the form mentioned in the said trust-deed or mortgage, and sealed the same with the corporate or common seal of the said company, and caused the names of its president and secretary to be thereto affixed, which bond was for the payment of the principal sum of money of one million eight thousand dollars in United States gold coin at par to the holder of the said bond thirty years from the date hereof, with interest thereon from date, payable semi-annually in gold coin as aforesaid, on the 1st days of January and July in each year.

And your orators further show unto your honors that the said Nashville, Chicago and *Nashville* Railroad Company thereupon delivered the said bond, secured by the said mortgage or deed of trust, to the said Edward F. Winslow, who thereupon and thereby became the holder of the said bond, and entitled to the moneys therein mentioned and agreed
94 to be paid, and that the said Edward F. Winslow thereafter assigned and delivered the same to your orators, as trustee aforesaid, by an assignment in writing, a copy of which is hereunto annexed, marked Schedule B, and which your orators pray may be taken as part of this bill of complaint.

And your orators further show that they hold the said bond and deed of trust securing the same as trustees for the holders of the bonds hereinafter described, as the consolidated mortgage bonds of the St. Louis and Southeastern Railway Company (consolidated).

And your orators further show unto your honors that the aforesaid St. Louis and Southeastern Railway Company of Illinois and Indiana, the aforesaid St. Louis and Southeastern Railway Company, Kentucky division, the aforesaid Evansville, Henderson and Nashville Railroad Company, and the aforesaid Nashville, Chicago and St. Louis Railroad Company, so incorporated as aforesaid, acting by and under authority of their respective charters and of the respective laws of the States of Illinois, Indiana, Kentucky, and Tennessee, did, on or about the 29th day of July, 1872, in due form of law, agree to consolidate, amalgamate, and merge their said corporations into one body corporate, called and named the St. Louis and Southeastern Railway Company (consolidated), the said
95 body corporate to succeed to all the rights, privileges, immunities, advantages, franchises, easements, and choses in action of said companies, and to assume all the liabilities thereof.

And your orators further show your honors that on or about the 1st day of October, 1872, under and by virtue of the said agreement of consolidation, duly entered into by and between the St. Louis and Southeastern Railway Company, a corporation created and existing under and by virtue of the laws of the States of Illinois and Indiana, the Evansville, Henderson & Nashville Railroad Company, a corporation created and existing under and by virtue of the laws of the commonwealth of Kentucky; the

St. Louis and Southeastern Railway Company, Kentucky Division, a corporation created and existing under and by virtue of the laws of the commonwealth of Kentucky; the Nashville, Chicago and St. Louis Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Tennessee, there became lawfully created, under and in pursuance of the statutes in such case made and provided, a corporation which is the corporation defendant herein, under the name of the St. Louis and Southeastern Railway Company (consolidated), and that
96 the said company from time to time became possessed of and now possesses all the powers, rights, privileges, franchises, and immunities mentioned in and granted by the legislatures of the States of Illinois, Indiana, and Tennessee, and by the general assembly of the commonwealth of Kentucky, respectively, by the sundry acts hereinbefore set forth, giving and granting to the several companies entering into the aforesaid agreement of consolidation, respectively, the powers, rights, privileges, franchises, and immunities hereinbefore more fully set forth and mentioned in the said acts, respectively, and assumed all the liabilities and obligation of the said corporation.

And your orators further show unto your honors, that the said St. Louis and Southeastern Railway Company (consolidated), on or about the first day of October, 1872, and at other times prior to the date of the mortgage hereinafter mentioned, was possessed, and is now possessed of the power, right, privilege, and franchise (among others) of constructing, maintaining, operating, and using certain railroads in the States of Illinois, Indiana, Kentucky, and Tennessee, and especially of a certain railroad in the State of Tennessee, extending from the city of Nashville northerly to the
97 State line between the States of Kentucky and Tennessee; all of which railroads are more particularly described in the mortgage or deed of trust hereinafter referred to; and that the said company has its office and principal place of transacting its business in the State of Tennessee, at Nashville, in the said State; and as your orators are advised and believe, the said corporation is a citizen of the State of Tennessee, within the meaning of the Constitution and laws of the United States relating to the jurisdiction of this honorable court.

And your orators further show unto your honors that the said corporation, the St. Louis and Southeastern Railway Company (consolidated), after its organization, became possessed of its railroads as aforesaid, and has operated and extended the same, and especially its railroad in the State of Tennessee, from the city of Nashville northerly to the State line between the States of Kentucky and Tennessee, and as such corporation is now in possession of the same, and in receipt of the rents, issues, and profits therefrom derived.

And your orators further show unto your honors, that on or about the first day of October, eighteen hundred and seventy-two, the board of directors of said company, in pursuance of the power and authority
98 in them by law vested, adopted resolutions to make its bonds as hereinafter mentioned, and to secure the same by the trust-deed or mortgage, known as its first consolidated mortgage, to your orators.

And your orators further show unto your honors that afterwards the said St. Louis and Southeastern Railway Company (consolidated), made its certain trust-deed October 1st, 1872, in the nature of a mortgage between the said company as party of the first part, and your orators, as party of the second part, and which deed was duly sealed with the corporate or common seal of the said company, and subscribed, by the president and secretary of the said company, and duly acknowledged by the same, and delivered it unto your orators, a copy of which deed of trust or mortgage is hereto annexed, and marked Schedule C, and which mortgage your orators pray may be taken and received as a part of this their bill of complaint.

And your orators further show unto your honors that the said mortgage was duly recorded in the several counties of the States of Illinois, Indiana, Kentucky, and Tennessee, in which the property covered by said mortgage is situated, prior to the 1st day of November, 1872.

99 And your orators further show unto your honors that the St. Louis and Southeastern Railway Company (consolidated) made its several negotiable bonds in the form mentioned in the said trust-deed or mortgage, and sealed the same with the common or corporate seal of said company, and caused the names of the president and secretary to be thereto affixed; each of which bonds was for the payment of the principal sum of money therein mentioned, in United States gold coin at par, to the holder of the said bonds, thirty years from the date thereof, with interest thereon from date at the rate of seven per cent. per annum, payable semi-annually in gold coin, as aforesaid, free of all United States Government tax, on the first days of February and August in each year, upon presentation of the respective coupons thereunto annexed.

And your orators further show unto your honors, that interest warrants or coupons for the payment of said interest, at the times above mentioned, were annexed to each of said bonds; and that the said bonds amounted in the aggregate to about nine millions five hundred thousand dollars ($9,500,000), of which about four millions were placed in trust to exchange for prior liens.

100 And your orators further show unto your honors that all of said bonds, which, by the provisions of the said bonds, were not to become valid or obligatory until authenticated by certificate endorsed thereon, and duly signed by your orators as such trustees, were afterwards, and on or about the date hereof, authenticated by a certificate endorsed thereon, and duly signed by your orators as such trustees.

And your orators further show unto your honors that the said St. Louis and Southeastern Railway Company (consolidated), at divers times, sold, issued, and delivered the said bonds, secured by the said mortgage or deed of trust, to a great number of individuals, partnership firms, and corporate bodies, who thereupon and thereby became the holders and bearers of the said bonds and entitled to the moneys therein mentioned and agreed to be paid, and that the bonds so made, sold, issued, and delivered amounted in the aggregate to the sum of five millions of dollars, of principal money, or thereabout, and that they have come by transfer and delivery into the hands of a large number of persons, some of whom are unknown to your orators and are too numerous to be made parties to this action.

101 And your orators further show unto your honors that on the 1st day of January, 1874, the Nashville, Chicago & St. Louis Railroad Company, and the said St. Louis and Southeastern Railway Company

(consolidated) utterly failed and made default in the payment of the interest which became due on that day, and that the said company has never paid the whole or any part of the said moneys which, according to the tenor and effect of the said bond, should have been paid on that day, and ever since the said first day of January, 1874, the amount of interest in arrear and unpaid on said bond has been the sum of thirty-five thousand dollars and upwards.

And your orators further show unto your honors that on the first day of February, 1874, the said St. Louis and Southeastern Railway Company (consolidated) utterly failed and made default in the payment of the interest *interest* warrants or coupons which became due on that day, and that the said company has never paid the whole or any part of the said moneys which, according to the tenor and effect of the said bonds and of the said interest warrants or coupons, should have been paid on that day, 102 and ever since the said first day of February, 1874, the amount of interest in arrear and unpaid on said bonds has been the sum of eighty thousand dollars and upwards.

And your orators further show unto your honors that the said Nashville, Chicago and St. Louis Railroad Company and Edward F. Winslow have or claim to have some interest in or lien upon the mortgaged premises or some portion thereof, which interest or lien, if any, has accrued subsequently to the lien of the aforesaid mortgage.

And your orators further show unto your honors that your orators claim that by the force and effect of the aforesaid mortgages or deeds of trust, bearing date the twenty-sixth day of September, 1872, and first day of October, 1872, all of the property of the said defendant, The St. Louis and Southeastern Railway Company (consolidated), described in the said mortgage, is subject to the lien of said mortgages, prior to the liens or claims of any of the other parties hereto.

And your orators further show unto your honors that no proceedings at law have been had, nor any suit or action commenced by or on behalf of your orators, or any holder of any of the bonds of the said company, secured by the mortgage aforesaid, for any interest unpaid or accrued thereon, except only this action.

103 In consideration whereof and for as much as your orators are remediless in the premises, at and by the strict rules at the common law, and are only relievable in a court of equity, where matters of this kind are properly cognizable and relievable.

Your orators therefore pray the aid of this honorable court, and that the said mortgages or deeds of trust may be decreed to be liens upon all the property, railroads, branches, extensions, and leased lines of the said St. Louis and Southeastern Railway (consolidated), described in the said mortgages or deeds of trust, within the jurisdiction of this honorable court, and that the said St. Louis and Southeastern Railway Company (consolidated) may be decreed to pay unto your orators and the other bondholders aforesaid mortgages or deeds of trust all arrears of interest now due, or that may hereafter become due and payable upon said bonds, together with all the costs and expenses in this behalf incurred and expended. And in default thereof that the said defendants above named, and all persons claiming under them, or either of them, may be forever barred and foreclosed of and from all equities of redemption and claim of, in, and to the

said mortgaged premises and every part and parcel thereof; and
104 that all and singular the said mortgaged premises within the jurisdiction of this honorable court, with the appurtenances, property, and effects, rights, immunities, and franchises in the said mortgages mentioned may be sold under decree of this honorable court; and that out of the money arising from the sale thereof, after deducting from the proceeds of any such sale just allowances for all disbursements and expenses of the said sale, including attorney's and counsel fees and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees in operating and maintaining the said railroad, or in manageing its business while in possession, and all payments which may have been made by them for taxes or assessments on the said premises, or any part thereof, as well as compensation for their own services, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, ratably, to the aggregate amount of such unpaid principal and accrued and unpaid interest; and if, after satisfaction thereof, a surplus of the
105 said proceeds shall remain, to pay over the same to the St. Louis and Southeastern Railway Company (consolidated), or to whomsoever may be lawfully or equitably entitled to receive the same, or as this court shall direct.

And your orators further pray that an account may be taken of the bonds secured by the said mortgages to your orators, and of the amount due on said bonds for principal and interest or either; and that the names of the lawful holders thereof may be ascertained; and that your orators as trustees as aforesaid may be let into the possession of the said railroad and its branches, and the income, tolls, and profits of the same, and also of the depots and machine-shops, station-houses, and other real estate, and all rolling stock, equipments, and appurtenances connected with or forming part of the said railroad and branches, and also all other property included in and covered by the said mortgage.

And your orators further pray that a receiver may be appointed, according to the course and practice of this court, with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, effects, moneys, receipts, and earnings, rights, privileges, and franchises, and immunities of the said railroad company and of all
106 other property included in and covered by the said mortgages within the jurisdiction of this honorable court.

And your orators further pray that a writ of injunction, issuing out of this honorable court, or issued by one of your honors, according to the form of the statute in such case made and provided, directing, commanding, enjoining, and restraining the said defendants, and each and every one of them, from interferring with, transferring, selling, or disposing of any of the property mentioned in and covered by the said mortgages, or from taking possession of, levying upon, or attempting to sell either by judicial process or othewise any portion of the property embraced in or covered by the said mortgage; and that your orator may have such further or other relief in the premises as the nature of the circumstances in this case may require, and to this honorable court may seem meet.

And may it please your honors to grant unto your orators a writ of injunction, issuing out of and under the seal of this honorable court, or issued by one of your honors, according to the form of the statute in such case made and provided, directing, commanding, enjoining, and restraining the said defendants, and each and every one of them, from interferring with, selling, or disposing of any of the property mentioned in or
107 covered by the said mortgages; and may it please your honors to grant unto your orators a supœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the St. Louis and Southeastern Railway Company (consolidated), the Nashville, Chicago and St. Louis Railroad Company, and Edward F. Winslow, the defendants respectively, therein and thereby commanding them, on a day certain therein to be named, and under a certain penalty, to be and appear before this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide by the said order, direction, and decree, as may be made against them in the premises, as shall seem meet and agreeable to equity and good conscience.

And as to the several persons who are properly parties defendant to this bill of complaint, and who are not citizens of the State of Tennessee, and who may be out of the jurisdiction of this court, your orators pray that process may be issued to make them parties if they should come within such jurisdiction, or that such proceedings may be had in regard to such parties defendant, according to the form of the statute in such
108 case made and provided. And your orators, as in duty bound, will ever pray, etc.

DEMOSS AND MALONE,
Solicitors of Complainants.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

George Opdyke, being duly sworn, doth depose and say that he is one of the complainants in the foregoing bill named, and has read the same, and knows the contents thereof, and that the said bill is true of his own knowledge, except as to those matters which are therein stated to be *be* on his information and belief, and as to those he believes it to be true.

GEORGE OPDYKE.

Sworn to before me this 25th day of November, 1874.
[NOTARIAL SEAL.] WM. J. HERON,
Notary Public, N. Y. City & Co.

109 SCHEDULE A.

This indenture made the twenty-sixth day of September, in the year one thousand eight hundred and seventy-two, between the Nashville, Chicago and St. Louis Railroad Company of the State of Tennessee, party of the first part, and Edward F. Winslow, of St. Louis, Missouri, party of the second part.

Whereas the said party of the first part is justly indebted to the said party of the second part, in the sum of one million eight thousand dollars gold coin of the United States of America, secured to be paid by its cer-

tain bond or obligation, bearing even date with these presents, for the payment
of the said amount of one million eight thousand dollars in gold coin
of the United States, on the 26th day of September, 1902, at the office of or the
agency of the said company in the city of New York, together with interest
thereon payable in like gold coin semi-annually on the first days of
110 January and July in each year until the whole principal sum is
paid, subject, however, as provided in the said bond, to credits for
payments made to the State of Tennessee, which said bond also contains an
agreement that should any default be made in the payment of the said interest,
or any part thereof, on any day whereon the same is made payable
as above expressed, and should the same remain unpaid and in arrear for
the space of thirty days, that then and from thenceforth, that is to say,
after the lapse of the said thirty days, the aforesaid principal sum of one
million eight thousand dollars, with all arrearage of interest thereon, shall,
at the option of the said party of the second part, or his legal representatives,
become and be due and payable immediately thereafter, although the
time limited for the payment thereof may not then have expired, anything
in the said bond contained to the contrary thereof in any wise not-
111 withstanding, as by the said bond or obligation, *as by the said bond
or obligation*, and the condition thereof, and the said agreement
therein contained, reference being thereunto had, may more fully appear.

Now, this indenture witnesseth that the said party of the said first part,
for the better securing the payment of the said sum of money mentioned
in the condition of the said bond or obligation, with interest thereon, according
to the true intent and meaning thereof, and also for and in consideration
of the sum of one dollar to it in hand paid by the said party of
the second part, at or before the ensealing and delivery of these presents,
the receipt whereof is hereby acknowledged, has granted, bargained, sold,
aliened, released, conveyed, and confirmed, and by these presents does
grant, bargain, sell, alien, release, convey, and confirm, unto the said party
of the second part, and to his heirs and assigns forever, all that certain railroad
in the counties of Davidson and Robertson, State of Tennessee,
112 formerly known as the Edgefield and Kentucky Railroad, and the
other property, real, personal, or mixed, and all the franchises,
rights, claims, and privileges conveyed to it or intended to be so conveyed
by the said party of the second part and Laura B., his wife, by deed
bearing even date herewith, this mortgage being given to secure the payment
of part of the purchase money thereof; and also all other property
of every description and in anywise appertaining to the railroad, so as
above conveyed to the said party of the first part, whether real or personal,
including all lands, buildings, bridges, iron rails, equipment, rolling
stock, and other property, whether now belonging to the said party of
the first part or hereafter acquired and appertaining to or necessary or
convenient for the said railroad and its use and operation ; and also all
the franchises, rights, and privileges of the said party of the first part,
together with all and singular the tenements, hereditaments, and ap-
113 purtenances thereunto belonging on in anywise appertaining, and
the reversion and reversions, remainder and remainders, rents,
issues, and profits thereof; and also all the estate, right, title, interest,
property, possession, claim, and demand whatsoever, as well in law as in
equity, of the said party of the first part, of, in, and to the same, and

every part and parcel thereof, with the appurtenances. To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their proper use, benefit, and behoof forever. Provided, always, that these presents are upon this express condition, that if the said party of the first part or its successors shall well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation and the interest thereon at the time, and in the manner mentioned in
114 the said condition, according to the true intent and meaning thereof,
that then these presents and the estate hereby granted shall cease, determine, and be null and void.

And the said party of the first part, for itself and its successors, does covenant and agree to pay unto the said party of the second part, his executors, administrators, and assigns, the said sum of money and interest as above mentioned and expressed, the conditions of the said bond, and if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part of either, that then and from thenceforth it shall be lawful for the said party of the second part, his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted or intended so to be and to sell and dispose of the same and all benefit and equity of redemption of the said party of the first part, its successors or assigns, therein, at
115 public auction according to the act in such case made and provided,
and as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same in fee simple, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertizement and sale of said premises, rendering the overplus of the purchase money (if any there shall be) unto the said party of the first part, its successors or assigns, which sale so to be made shall forever be a perpetual bar, both in law and equity, against the said party of the first part, its successors and assigns, and against all other persons claiming or to claim the premises, or any part thereof, by, from, or under it, them, or any of them.

And whereas it is provided by the said bond that the party here-
116 to of the second part may require the party of the first part to is-
sue, in lieu of the said bond, certain one thousand and eight coupon bonds, it is hereby agreed that the lien of these presents shall, in case such bonds are issued, *shall* subsist and enure for the benefit of the holders of such bonds equally, and that the said party of the first part shall, on the demand of the *demand of the* party of the second part, his executors, administrators, or assigns, in such case make, execute, acknowledge, and deliver such other and further agreements, conveyances, or trust deeds as may by counsel learned in the law be reasonably devised or required for the purpose of more effectually and conveniently providing for the security of the holders of such bonds. In witness whereof the party of the first part has caused these presents to be executed by its president and attested

by its secretary, and its corporate seal to be hereunto affixed, the day and year first above mentioned.

117 THE NASHVILLE, CHICAGO AND
ST. LOUIS RAILROAD COMPANY,
By EDWARD F. WINSLOW, *President.*

Attest:
JOHN P. HAINS, *Secretary.*

In presence of (the words "in like gold coin semi-annually" interlined before execution)—
BLUFORD WILSON.

(The bonds issued under this mortgage are duly stamped according to law.)

118 SCHEDULE B.

Know all men by these presents, that I, Edward F. Winslow, of St. Louis, Missouri, of the first part, in consideration of the sum one dollar, lawful money of the United States, to me in hand paid by George Opdyke and P. C. Calhoun, as trustees under a deed of trust dated 1st October, 1872, made to them by the St. Louis and Southeastern Railway Company (consolidated) of the second part, at or before the ensealing and delivery of these presents, the receipt thereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said parties of the second part a certain indenture of mortgage, bearing date the 26th day of September, A. D. 1872, made by the Nashville, Chicago and St. Louis Railroad Company to me to secure the payment of the sum of one million eight thousand dollars on the 26th
119 day of September, 1902, and recorded in the office of the register of the county of Davidson, State of Tennessee, on 26th September, 1872, in book 48, page 89, and in the office of the register of the county of Robertson, in said State, on 5th October, 1872, in book No. 16, page 99, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest, to have and to hold the same unto the said parties of the second part, their successors and assigns forever; but, nevertheless, in trust for the benefit of the holders of the bonds of the said St. Louis and Southeastern Railway Company (consolidated), secured by the deed of trust of the said last-named company to the parties hereto of the second part, dated 1st October, 1872, subject only to the proviso in the said indenture of mortgage mentioned.

And I do hereby make, constitute, and appoint the said parties of
120 the second part, my true and lawful attorney, irrevocable, in my name or otherwise, but at their proper cost and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully as I might or could do if these presents were not made.

In witness whereof I have hereunto set my hand and seal the sixth day of November, in the year of our Lord 1872.

EDWARD F. WINSLOW. [SEAL.]

Sealed and delivered in the presence of—
WILLIAM C. LUSK.
CHARLES NETTLETON.

121 On the 15th day of September, 1876, the following bond was filed, which is in the words and figures following, to wit:

Know all men by these presents that I, James H. Wilson, as principal, and Morris K. Jessup, of New York City, Bluford Wilson, of Springfield, Illinois, Merritt S. Jones, of Shawneetown, Illinois, Joseph J. Castles, of Equality, Illinois, Broughton Temple, of Equality, Illinois, as sureties, are held and firmly bound unto the clerk of the United States circuit court for the middle district of Tennessee in the sum of twenty thousand dollars ($20,000.00), to be paid to said clerk, his successor in office or assigns, for which payment, well and truly to be made, we, and each of us, bind ourselves, jointly and severally, and our respective heirs, executors, and administrators, firmly by these presents. Signed, sealed, and dated the eighth day of September, 1876.

The condition of the above obligation is such that whereas, by an order of said court made on the eighth day of September, 1876, in a cause therein pending, wherein Philo C. Calhoun and George Opdyke, trustees, are complainants and the St. Louis and Southeastern Railway Company and others are defendants, it was, among other things, ordered 122 that the above-bounded James H. Wilson be appointed receiver of all the property, equitable interest, things in action, and effects of the defendant, and that he be vested with all the rights and powers of a receiver in chancery, upon his filing a bond for the faithful performance of his duties in the penal sum of twenty thousand dollars ($20,000.00), and the approval thereof by said court:

Now, therefore, if the said James H. Wilson shall duly account for what shall come to his hands or controle as such receiver, and pay and apply the same from time to time as he may be directed by said court, and obey such orders as said court may make in relation to said trust, and in all respects faithfully discharge the duties of said trust, then the above obligation to be void, otherwise in full force and effect.

JAMES H. WILSON.
MORRIS K. JESSUP.
BLUFORD WILSON.
MERRITT L. JONES.
JOSEPH J. CASTLES.
BROUGHTON TEMPLE.

Sealed and delivered in presence of—
D. A. Lindley,
D. A. Lindley,
H. W. Gardiner,
H. W. Gardiner.

Approved Sept. 15, 1876.

E. R. CAMPBELL, *Clerk*,
By J. W. CAMPBELL, *D. C.*

123 I, James H. Wilson, having been appointed receiver in the above cause, do hereby accept the said appointment. I do solemnly swear that I will faithfully perform and fulfill the duties of said office of receiver to the best of my ability.

JAMES H. WILSON.

Subscribed and sworn to before me, clerk of the circuit court of the United States for the southern district of Illinois.

Witness, John A. Jones, clerk, and the seal of said circuit court at Springfield, in said district, this 8th day of Sept., in the year of our Lord one thousand eight hundred & seventy-six.

[SEAL.] J. A. JONES, *Clerk.*

I, J. A. Jones, clerk of said circuit court, do hereby certify the foregoing to be a substantial and sufficient bond.

Witness my hand and seal of said court, at Springfield aforesaid, this 15th September, 1876.

J. A. JONES, *Clerk.*

124 On the 7 December, 1874, the answer of the defendants was filed in words and figures, to wit:

In the circuit court of the United States for the middle district of Tennessee.

PHILO C. CALHOUN AND GEORGE OPDYKE, trustees, &c.,
vs.
SAINT LOUIS AND SOUTHEASTERN RAILWAY Company (consolidated), Nashville, Chicago & St. Louis Railroad Company, and Edward F. Winslow.

The answer of the Saint Louis and Southeastern Railway Company (consolidated), the Nashville, Chicago and St. Louis Railroad Company, and Edward F. Winslow to the amended bill of complaint filed in the above-entitled action, respectfully sets out that the said defendants, and every of them, as to so much of the amended bill of complaint as they are advised it is material for them to answer, do make answer as follows:

That they admit to be true the following averments in said amended bill of complaint contained, to wit:

That on the twenty-sixth day of September, 1872, the said Nashville, Chicago and St. Louis Railroad Company made its certain trust-deed, in the nature of a mortgage, unto Edward F. Winslow, which was duly sealed with its corporate seal, subscribed by its president and secretary, and by them duly acknowledged and delivered unto Edward F. Winslow.

125 That the same was duly recorded in the counties of Davidson and Robertson, in the State of Tennessee; that said Nashville, Chicago and St. Louis Railroad Company made its bond in the form mentioned in the said trust-deed or mortgage, and sealed the same with the common or corporate seal of the said company, and caused the names of its president and secretary to be thereto affixed, which bond was for the payment of the sum of one million eight thousand dollars in United States gold coin at par, to the holder of said bond, thirty years from the date thereof, with interest thereon from date, payable semi-annually in gold coin as aforesaid, on the first days of January and July in each year.

That the said Nashville, Chicago and St. Louis Railroad Company thereupon delivered the said bond, secured by the said mortgage or deed of trust, to the said Edward F. Winslow, who thereupon became the holder of the said bond, and entitled to the moneys therein mentioned and agreed to be paid, and that the said Edward F. Winslow thereafter assigned and delivered the same to the complainants herein, as trustees aforesaid, by an assignment in writing duly made, executed, and delivered, bearing 126 date the sixth day of November, 1872, and that said complainants, as trustees, held the said bond and deed of trust securing the same as trustees for the holders of the bonds in said amended bill described as the consolidated mortgage bonds of the St. Louis & Southeastern Railway Company (consolidated).

And the said Edward F. Winslow, for himself, adopts the answer heretofore filed in this cause, and all admissions, averments, and consent therein contained, the same as if therein by him specially answered in his own behalf.

And the said defendants, severally, admit that there is still due to the State of Tennessee a large amount, to wit, over two hundred and fifty thousand dollars, payable in the bonds of the said State, on account of purchase-money for the Edgefield and Kentucky Railroad, being the railroad of the said companies, for which said State retains a lien prior to all other incumbrances on said railway in Tennessee.

{SEAL OF THE ST. L. & S. E. R'W CO (CONSOLIDATED).}
ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (CONSOLIDATED).
By E. L. ABBETT, *Attorney.*

{SEAL OF THE N. C. & ST. L. R. R. CO.}
NASHVILLE, CHICAGO & ST. LOUIS RAILROAD COMPANY,
By E. L. ABBETT, *Attorney.*
EDWARD F. WINSLOW,
By E. L. ABBETT, *Attorney.*

127 On the 13th August, 1877, a petition was filed as follows:

UNITED STATES OF AMERICA,
Middle District of Tennessee:

In the United States circuit court for the middle district of Tennessee.

PHILO C. CALHOUN AND GEORGE OPDYKE, trustees,
vs.
THE ST. LOUIS & SOUTHEASTERN RAILWAY Company (consolidated).
} In equity.

To the hon'l judges of the circuit court of the United States for the middle district of Tennsssee, sitting in chancery:

Your petitioners, the United States of America, through their district attorney, James A. Warder, respectfully allege, represent, and show that the St. Louis and Southeastern Railway Company, a corporation created under the laws of the State of Illinois, by successive consolidations became united, associated, amalgamated, and consolidated with the Evansville and Southern Illinois Railroad Company, a corporation created under the laws

of the State of Illinois; the Evansville, Carmi and Paducah Railroad Company, a corporation created under the laws of the State of Indiana; the Evansville, Henderson and Nashville Railroad Company, a corporation
128 created under the laws of the State of Kentucky; the
Nashville, Chicago and St. Louis Railroad Company, a corporation created under the laws of the State of Tennessee; the St. Louis and Southeastern Railway Company, Kentucky division, a corporation created under the laws of the State of Kentucky, under the name of the St. Louis and Southeastern Railway Company (consolidated); and further shows that on the 24th day of October, 1874, Philo C. Calhoun and George Opdyke, trustees, &c., filed their bill in your honorable court, representing the bonded creditors of said   alleging defaults in payments of interest and various other allegations unnecessary to set out in this petition, and asking and praying, among other thing, that a receiver be appointed by the honorable court to take charge of said road, its implements, machinery, and rolling stock, and manage its affairs under the direction of the honorable court.

That in filing said bill, all necessary allegations con*fir*'ing jurisdiction on the court were made, process issued, the defendant answered, and such proceedings were had that on the 24' day of October,
129 1874, Jediah F. Alexander was appointed receiver in said cause,
with power to enter and take possession of said road, all its supplies and materials, tracks, switches, rights of way, and all property, real and personal, of whatsoever name, nature, and description, to hold on and dispose of under the orders and direction of the court; in short, to operate said company's road and branches within the limits of Tennessee; to employ agents and assistants, to provide for out of the fund the current expenses, and as to the residue deposit the same in some national bank, and pay the am'ts so deposited into the court, and await the further orders of the court as to the disposition of the same; that J. F. Alexander gave the bond as directed in said decree, qualified, and took upon him the receivership; that he died on the 9th day of September, 1876. In the United States circuit court for the middle district of Tennessee, at chambers, James H. Wilson was appointed receiver in the cause in the place of J. F. Alexander, deceased, having the same power conferred on him and subject to the same restrictions as contained in the decree originally ap-
130 point*ed* a receiver; that he gave bond and qualified; by different
directions, orders, references, and decrees the road has been and is still being operated through the instrumentality of a receiver, its payments and disbursements being directed, its liabilities being determined, the rights and equities   its dif'erent creditors adjusted by appropriate proceedings in said cause.

The same is still pending in your honorable court. Reference is hereby made to said proceedings for all they contain. And now the United States of America allege and show your honors that the St. Louis and Southeastern Railway Company is indebted to them in the sum of nineteen hundred and seventy-one $\frac{96}{100}$ dollars, together with the statutory penalties and interest accruing thereon for failure to pay said amount upon notice and demand, and to make proper returns and reports. A duly certified copy of the assessment made by the hon'l. Commissioner of Internal Revenue, the Hon. D. D. Pratt, is herewith filed as Exhibit A, and made a part of

this petition. And further, that the St. Louis and Southeastern Rail-
131 way Company (consolidated), being a person, firm, or company, hav-
ing a place of business within the middle district of Tennessee, to wit, in the city of Nashville, where credits were opened by the collection or deposit of money, subject to be paid, remitted, on draft check or order, and being a corporation, person, or association within the letter and meaning of the statute of the United States, did use for circulation and pay out by them, their agents, officers, and receivers, a large amount of their own notes, used for circulation and paid out by them, and did fail to make true and complete returns of the monthly amount of circulation so paid out by them, on which the internal revenue taxes of the United States were imposed, in duplicate on the 1st day of December and the 1st day of June, with a declaration annexed thereto, under the oath of the person, president, or cashier, in such form and manner as was prescribed by the Commissioner of Internal Revenue, that the same contained a true and faithful statement of the amount subject to tax aforesaid, one copy to be transmitted to
the collector of the district, and one copy to the Commissioner of
132 Internal Revenue, but did fail to make said return as required by
law, and in default of said return the Hon. D. D. Pratt, Commissioner of Internal Revenue, upon the best information he could obtain, did estimate the circulation so paid, and did assess the St. Louis & Southeastern Railway Company (consolidated) for the period from October, 1873, to May, 1875, on their circulation issued in the sum of eighteen hundred and sixty $\frac{90}{100}$ dollars, and for their notes in circulation so paid out in the month of May, 1875, in the sum of one hundred and eleven $\frac{03}{100}$ dollars, which said sum, with the penalties and interest, are due and unpaid. And further allege and show that by means of the issuance of their notes, and the paying out of the same from and within the period aforesaid they became liable to pay and indebted to the United States of America for the per centum thereon, and by reason of their failure to make the returns aforesaid and the assessment of the honorable Commissioner aforesaid,
and their failure to pay the sums aforesaid upon notice and demand,
133 became liable to pay the increased penalties and interest as imposed
by statute. All of which remain due and unpaid.

And further show and allege that by the liens imposed by the internal-revenue laws, as well as by the priorities secured by statute of the United States to the Government of the United States for the debts due in such cases, the claims and debt then due is a prior claim and liability, to be first paid from the assets of said corporation.

The premises considered, they pray that *that* this become a petition in the aforesaid cause; that all necessary and proper process issue; that all necessary decrees be had, all necessary orders and references be made, and the receiver be directed to pay the same from the funds in his hands; or such orders be made as will secure the payment of the same; and all such other and further relief as the nature of the case admits of.

JAMES A. WARDER,
U. S. Dist. Att'y, Middle Dist. Tenn.

Subpœna to answer.—Issued 22 *August*, 1877.

The President of the United States of America to the marshal of the middle district of Tennessee, greeting:

134 You are hereby commanded to summon The St. Louis and South-

eastern Railway Company (consolidated), of which James H. Wilson is receiver, if to be found in your district, to be and appear before the judges of the circuit court of the United States, in the sixth circuit *court of the United States, in the sixth circuit* for the middle district of Tennessee, at the Federal court-room at Nashville, in said State, on the 3rd Monday in October next, then and there to answer a petition filed in said court in the case of Philo C. Calhoun and George Opdyke, trustees, vs. The St. Louis & Southeastern Railway Company (consolidated) by the United States of America.

Herein fail not, and have then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this *this* 22' day of August, in the year of our Lord eighteen hundred and seventy-seven, and of the Independence of the United States the 101st.

E. R. CAMPBELL, *Clerk*,
By J. W. CAMPBELL, *D. C.*

MEMO.—The defendant is required to enter its appearance in the clerk's office on or before the first Monday in October next, and plead, answer, or demur to said petition, or the same will be taken for confessed and set for hearing ex parte.

E. R. CAMPBELL, *Clerk*.

135 Returned: "Came to hand same day issued, and executed on R. G. Butler, agent (he being the chief officer of said road in Tennessee), by making known to him the contents hereof, and at same time delivering to him a copy of spa. to ans., and also a copy of compl't's bill.

"Sept. 10, 1877.

"E. S. WHEAT, *U. S. M.*"

Assessment.

Alphabetical list of persons liable to tax under the internal revenue laws of the United States in the 1st collection district of the State of Missouri reported by the collector of said district for assessment, and the amount assessed against each by the Commissioner of Internal Revenue, certified to the collector of said district for collection, for the month of , 187 .

No. of line: 17.
Name: St. L. & S. E. R. R. Co.
Article or occupation: Circulation certificates of indebtedness.
Period: Oct. 1, 1873, to May 1, 1875 (1,860.90); month of May, 1875 (111.03).

Amount reported by collector	$1,860 90
	111 03
Tax assessed: Oct. 1, ’73, to May 1, 1875	1,860 90
" month of May, 1875	111 03
136 Total tax & penalty (Oct. 1, ’73, to May 1, ’75)	$1,860 93
Do. (month of May, 1875	111 03

Aggregate statement of taxes assessed and reported to collector.

(To be executed in triplicate. One copy to be forwarded to the First Comptroller of the Treasury, and one copy to the Commissioner of Internal Revenue; the other copy to be attached to the list on form 23, filed in collector's office.)

I, Daniel D. Pratt, Commissioner of Internal Revenue, hereby certify that I have this day sent to Isaac H. Sturgeon, collector for the 1st district of Missouri, an alphabetical list of taxes payable within said district for the month of July, 1875, amounting to six thousand eight hundred and thirty-nine and $\frac{67}{100}$ dollars.

$6,839.67.] D. D. PRATT,
Commissioner of Internal Revenue.
H. O. G.

Dated at Washington, D. C., this 27th day of August, 1875.
L. E. B.

Collector's receipt.

I hereby acknowledge the receipt from Daniel D. Pratt, Commissioner of Internal Revenue, of a list as above described, amounting to six thousand eight hundred thirty-nine & $\frac{67}{100}$ dollars.

137 $6,839.67.] ISAAC H. STURGEON,
Collector 1st District of Missouri.

Dated at St. Louis, Mo., this 1st day of Sept., 1875.

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT, *October* 8, 1878.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed are true copies of certain assessments or list on file in this department.

In testimony whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

[SEAL.] JOHN SHERMAN, *T.*

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE 1ST DISTRICT MISSOURI,
Saint Louis, July 7, 1876.

I, Isaac H. Sturgeon, collector of internal revenue for the first collection district of Missouri, do hereby certify that the following is a true statement of an assessment made by the Commissioner of Internal Revenue, Hon. D. D. Pratt, and returned by him to me for collection on the monthly list for July, 1875, page 3, lines 17 & 18.

138 17 & 18.

Name of party assessed.	Nature of tax.	Period.	Amount assessed.
Saint Louis and Southeastern Railroad Company.	Circulation; certificates of indebtedness.	Oct., 1873, to May, 1875.	$1,860 93
Same	Same	Month of May, 1875	111 03
			$1,971 96

And that this statement is herewith transmitted, under the provisions of section 3209, Revised Statutes of the United States, for collection.

Witness my hand & official seal.

ISAAC H. STURGEON,
Collector Int. Rev. 1st Dist. Mo.

To D. A. CLIFFE, Esq.,
Collector Internal Revenue, Nashville, Tenn.

Answer of receiver to petition filed by U. S.

UNITED STATES OF AMERICA,
Middle District of Tennessee:

In the circuit court of the United States for the middle district of Tennessee, April term, 1879.

CALHOUN & OPDYKE
vs.
THE ST. LOUIS & SOUTHEASTERN RAILWAY CO.
(consolidated).

139 In the matter of the intervening petition of the United States against James H. Wilson, receiver herein.

James H. Wilson, the receiver in this cause, for answer to so much of the petition of the United States, the petitioner, as he is advised is material or necessary to answer, says that—

He admits the creation and existance of the defendant company, the St. Louis and Southeastern Railway Company (consolidated), substantially as stated in said petition, and the appointment of receivers for said company under the orders of this honorable court heretofore made in this cause. But this defendant, further answering, wholly denies that the defendant company is now or was at any time indebted to the petitioner in the sum of $1,976.76, or any sum, or that the said company is or was indebted to the said petitioner in any sum whatever for interest and penalties accruing on said last-mentioned sum of $1,976.76 for failure to pay the same upon notice and demand, or for failing to make returns and reports, or upon any account whatever.

140 He denies that the defendant company was a corporation, person, or association within the meaning of any statute of the United States whereby, in the transaction of its business as a railway company, or carrier of freights and passengers for hire it became liable to pay the United States the whole or any part of the tax in manner and form claimed in their said petition.

It is not true that the said company, by its agents, officers, or receivers, used for circulation, and paid out a large amount of said company's notes, which were used for circulation, or intended to be circulated or used as money.

It is true that the said defendant company was greatly embarrassed from the 1st day of September, 1873, down to the 1st day of November, 1877, on or about which date a receiver was appointed for the same. During the period the company borrowed money from everybody that was will-

ing to loan, and issued its promissory notes for the money so borrowed. When said notes became due they were either paid in whole or part, or were renewed. Among others who became creditors of the company were certain employees thereof, and certain merchants and business men
141 who rendered services to said company, or furnished it material or supplies from time to time prior to the appointment of said receiver, or either of them, and accepted the promissory notes of said company, payable four months after date, and bearing interest at ten per cent. One of said notes is set out in full in the stipulation between counsel hereto, reference to which is made for greater certainty. These notes, so far as they were paid, were paid in full on and after their maturity. Some of them were issued after the company passed under the control of this respondent, or his predecessor herein, and some were used in any way by the receivers herein in their operation and management of said railway.

Wherefore this respondent says neither the funds in his hands nor the property of the defendant company is liable for any part of the said several sums claimed by the petitioner, and prays to be hence dismissed with his reasonable costs.

JAS. H. WILSON, *Receiver*,
By BLUFORD WILSON,
Solicitor.

Replication.

CALHOUN & OPDYKE, TRUSTEE', }
v. } In equity.
THE ST. L. & S. E. R. R. CO. }

142 In the matter of the United States.

The replication of the complainant to the answer of the defendant.

These repliants saving and reserving unto themselves, now and at all times hereafter all manner of benefit and advantage of exceptions which may be taken *or taken* to the manifold insufficencies of the said answer, for replication thereunto say: They will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants. Without this, that any other or thing whatsoever in said answer contained material or effectual in law to be replied unto, and not herein well and sufficiently replied, confessed or avoided, traversed or denied, is true. All of which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court may direct, and humbly pray as in and by their said petition they have already p*rov*ed.

JAMES. A. WARDER,
Solicitor.

143 *Deposition of F. Pfeister, late deputy collector, &c.*

Int. What office did you hold during the year 1876?

Ans. I was deputy collector of internal revenue, 5th district, Tenn. (old district).

Int. As such officer did you make demand upon the St. Louis & Southeastern R. R. Co., for the taxes assessed upon its circulation, which assessment was transmitted to the collector of the 5th dist., Tenn., by Isaac H. Sturgeon, collector int. rev. for the 1st collection district of Mo., July 7, 1876; and if so, at what date did you make such demand?

Ans. I did make the demand upon Mr. Butler, agent of the road located at Nashville on or about the first day of August—I think before the 1st day of August, 1876.

Int. Is any record or memorandum required by regulation to be kept of such demand?

Ans. No, sir; nor by law is any record required to be kept.

Int. Did said road ever make any return of this collection into the collector's office, 5th district, Tenn., as required by law?

Ans. No, sir.

FERDINAND PFISTER,
Late Deputy Collector of Int. Rev. 5th Dist. Tenn.

Sworn to and subscribed before me this 19th Oct., 1878.

LEWIS T. BAXTER, *Clerk.*

144 The foregoing deposition was taken by me on the 19th day of October, 1878, in pursuance of notice to the parties that I would proceed on said day to the hearing of proof and taking the account as directed by the reference, and I certify that I am not of kin nor counsel to either party nor interested in the cause.

LEWIS T. BAXTER, *Clerk.*

Report of clerk and master.—Filed April 30, 1879.

CALHOUN AND OPDYKE, TRUSTEES,
vs.
ST. L. & SE. R. R. CO. (CONSOLIDATED) ET AL. } In equity. No. 2184.

Pursuant to a decree of this court at the April term, 1878, directing the undersigned as clerk and master to hear proof and report—

"The amount of internal revenue tax due the government, and

"2d. If there are sufficient funds in the hands of the receiver to pay the same."

He reports as follows:

It appears from a certified statement of an assessment made by the Commissioner of Internal Revenue, Hon. D. D. Pratt, and returned to Isaac H. Sturgeon, collector of internal revenue, for the first collection district of Missouri, on the monthly list for July, 1875, that there was due
145 the United States from the St. Louis and Southeastern Railroad Company, on account of circulating certificates of indebtedness from October, 1873, to May, 1875, the sum of $1,860.93 and for the month of May, 1875, the further sum of $111.03, making in all the sum of $1.971.96.

The deposition of Ferdinand Pfeister, formerly deputy collector of internal revenue for the 5th collection district of Tennessee, was taken, which shows that he, as such deputy collector, made demand on the agent at Nashville for the taxes due the United States on or about the 1st of August, 1875.

Under section 3185 and 3187 of the Revised Statutes of the United States it is insisted that the defendant is liable to and owes the U. S. the penalty of 5 per cent. of the above amount of $1,971.96, amounting to the sum of $98.59, and the further sum of $893.24 interest at the rate of one per cent. per month on $1,860.93, and $52.18 interest at the rate of one per cent. per month on $111.03.

Under sections 3414 and 3415 the plaintiffs insists that defendant owes them the additional sum of two hundred dollars, the penalty prescribed in said section.

146 There is therefore due the United States from the St. Louis and Southeastern Railroad Company the sum of $3,216.03, made up as follows:

Amount due as per assessment	$1, 971	96
5 per cent. penalty	98	59
Int. on 1st am't ($1,860.93)	893	24
" " 2nd " (111.03)	52	24
Penalty (under 3415–15)	200	
Total	$3, 216	03

There are sufficient funds in the hands of the receiver to pay the same.
Respectfully submitted.

LEWIS T. BAXTER,
Clerk & Master.

Exceptions to said report.

UNITED STATES OF AMERICA,
Middle District of Tennessee:

In the circuit court of the United States for the middle district of Tennessee.

GEORGE OPDYKE AND PHILO C. CALHOUN
vs.
THE ST. LOUIS & S. E. R. W. CO. (CONSOLIDATED). } In equity.

In the matter of the master's report on the intervening petition of the United States vs. the receiver herein.

And now comes James H. Wilson, the receiver of the above railway, by Bluford Wilson, his attorney, and excepts to the report of the said master, and for cause of exception says: 147

1. The master errs in finding the sum of $1,971.96, due the United States from the St. Louis and Southeastern Railway Company (consolidated) on account of tax for circulating certificates of indebtedness. One of said certificates is filed herewith under leave of the attorney of the United States.

The said master should have found that the said railway company was not liable for the said sum or any sum, inasmuch as the said railway company was not "a bank or banker" within the meaning of the statutes of the United States.

2. The master errs in finding for the United States in the matter of interest and penalties.

BLUFORD WILSON,
Solicitor for Receiver.

Copy original certificate of indebtedness attached to said exception.

No. 3491.] St. Louis & Southeastern Railway Company,
1874.

Certificate of indebtedness, good for twenty dollars, to H. W. Gardiner, paymaster, or bearer, payable at the office of the treasurer, St. Louis, Mo., four months after date, with interest at the rate of ten per cent. per annum. Good only when countersigned by the paymaster of the company.

J. F. ALEXANDER, *Treasurer.*

I. P. Hains, *Auditor.*

(On margin:) Countersigned:

H. W. GARDNER, *Paymaster.*

148 $20.00.] [Due Dec. 6, 1874.

Twenty-five per cent. of freight bills due the company may be paid in these certificates at their face value before maturity thereof.

Stipulation of counsel.

Calhoun and Opdyke, trustees,
vs.
The St. Louis and Southeastern R. R. Co.

In the matter of the United States, intervening petitioner.

It is agreed by and between James A. Warder, the United States attorney, representing the petitioner, and Bluford Wilson, representing the defendant, that the certificate appended hereto* is in the form of those issued by the defendant; that from October, 1873, and to November, 1874, at various times, the defendant, being in need of money, issued the same and paid their laborers and paid them out for supplies and materials furnished, and received them when overdue for freights and debts accruing to the company, or paid them at their face value with interest.

JAMES A. WARDER,
BLUFORD WILSON,
Sol'r for Receiver.

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* See certificate filed with exception (on last page.)

149 On the 24th day of October, 1874, a decree was rendered, which is in the words and figures following:

PHILO C. CALHOUN AND GEORGE OPDYKE, complainants, *vs.* THE ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (consolidated), The Nashville, Chicago and St. Louis Railroad Company, defendants.	2184. In equity.

This day came the parties herein, and the defendants having admitted the default complained of in the bill, the motion of the complainants for the appointment of a receiver according to the prayer of the bill upon the pleadings, exhibits, and affidavits on file—

It is ordered and decreed that this court doth, on this 24th day of October, 1874, order and adjudge that Jediah F. Alexander, of Greenville, Illinois, be, and he is hereby, appointed receiver in this cause, with power to enter and take possession of the railroad of said St. Louis and Southeastern Railway Company (consolidated), in the State of Tennessee, and all its branches in the said State of Tennessee, together with all the supplies of materials provided by the said company to be used in the construction, reconstruction, and repair of said road, or to be used in operating the
150 same, with all side tracts, switches, station-houses, warehouses, water stations, turn-tables, rights of way, and grounds in use, or necessary or convenient to be used, in operating said road, belonging to said company; also all locomotives, engines, cars, and rolling-stock of every kind and discription owned by and belonging to said company and used in operating the roads of the said company in the State of Tennessee, and all tools and implements used in operating said roads, or provided therefor, and all machine shops and all workshops, and the machinery, tools, and implements therein, and stock of wood, iron, and other materials on hand, belonging to said company, to be used in the construction of shops, or shop machinery, and all money, credits, and choses in action belonging to said company, and all other property, real and personal, of whatsoever name, nature, or description, and wheresoever situate within said State, belonging to said company and provided by it to be used in the prosecution of its business in said State, whether the same be in actual use or not, and the same to hold, use, and dispose of under the order and direction of this court to be made from time to time herein and therewith until otherwise ordered. The said receiver shall operate said company's road and branches situate in the State
151 of Tennessee throughout the whole extent thereof, according to the usual course of business thereof, and to the best advantage for the interest of the parties, and to that end shall operate the said railroad, in connection with the whole consolidated railroad of the said company defendant, in such manner as to make the railroad in his possession a part of the through line from St. Louis to Nashville, and generally to maintain said road, its rolling stock and fixtures and appurtenances, in thoroughly good, efficient, and safe condition for use; and to provide for that purpose by purchase for cash or credit, or partly for cash and partly on credit, materials and supplies whenever necessary. And the corporate officers of said company, their agents, servants, and employees, having the custody and charge of

said property and effects of said company, or any part thereof, to be taken possession of by said receiver as aforesaid, are hereby ordered and required forthwith, upon the request of said receiver, to surrender the same, and all books, papers, accounts, vouchers, and agreements and evidences of debt due to or by said company, so far as within the jurisdiction of this court, to the said receiver, his agents or employees, and all of the same, without any such actual delivery, shall, immediately upon his giving a
152 bond and taking the oath herein required, be held and taken to
be vested in his actual possession, and subject to his order, for all purposes needful in the prosecution for the business of said company.

And the said receiver is hereby authorized and empowered to retain, employ, and pay all such agents, servants, laborers, clerks, and assistants as in his discretion may be necessary under him to carry this order into effect with economy and prudence, and to make, enter into, and perform all contracts for the obtaining of necessary supplies and materials, and for the pros*i*cution of said business, and for the purposes above named, and for the purpose of paying all rentals upon leased property and equipments and terminal expenses, said receiver is hereby fully authorized and empowered to appropriate and apply the property, money, and effects aforesaid, vested in him as aforesaid, with the current earnings of said road and business, so far as the same may be necessary, and said receiver is hereby ordered and required ot keep, or cause to be kept, in a regular and systematic order, strict and regular accounts of the business of said trusts in his hands, and of the daily receipts and disbursements of money distinguishing in said accounts the receipts and disbursements of the road of the said com-
153 pany earned and expended in the State of Tennessee, and stating
the mode of division of the earnings arising from through business which passes over any portion of the company's roads in other States, and showing the items in detail, and required to file in the office of the clerk of this court, once in each month, and within twenty days after the expiration of each month, an abstract account of his receipts and disbursements, and shall, as often as required by the special order of the court, make full reports of his doings, and settle accounts.

And the said receiver is also hereby required and ordered to deposit the surplus money accruing in his hands, over and above current expenditures, in some national bank or banks to his credit as receiver herein.

It is further ordered by the court that said receiver out of the net earnings which may come into his hands from the operation of the road, and as speedily as the same can be done without prejudice to the current business, pay all certificates of indebtedness and all such balances as are now due to operatives and persons employed heretofore by the said company in the prosecution of its business, in operating its road for supplies and material, and in maintaining and keeping the same in repair since
154 the first day of January, 1874; a schedule of all which said indebt-
edness shall be prepared by the said receiver as speedily as practicable, and filed with the clerk of the court; provided, however, that no payments on account of such balances or indebtedness shall be made until the said schedule has first been filed as provided.

The receiver shall also pay, in like manner, all sums which are now, or may hereafter become due for taxes upon any of the property coming to his hands as receiver, and also all interest or principal due or to become due upon any purchase of property which comes to his hands as receiver, and which in the judgment of the said receiver it will be beneficial to the estate in his possession to pay. The said receiver shall also pay out of the net earnings of the railroad, and as speedily as may be done consistently with the best interests of the business, all sums which may be due by the said company for supplies heretofore purchased, and all sums due or to become due by said company and road to connecting railroads for freights or carriage of passengers or sales of tickets, and shall reco'nize all tickets heretofore sold on behalf of the said company, and shall collect all sums due to the said company, whether for the sale of tickets, for freights, or 155 otherwise from other railroad companies or others, and in all such matters may adjust the accounts with other portions of the railroad of said company upon a mileage basis.

And for the purpose of providing money to make payments on account of the balance of purchase-money due to the State of Tennessee, the said receiver may from time to time, as the same may be necessary, make and issue his certificates in such general form as may be approved by this court providing for the payment thereof, at the rate of seven per centum per annum, and the sum or sums represented by such certificates shall, unless previously discharged, be paid out of any moneys realized from a foreclosure and sale of the mortgaged property within the jurisdiction of this court equally with any other liability incurred by the receiver in the management of the said railroad and the protection of the said property coming into his hands as receiver aforesaid.

And if after making all payments hereinbefore authorized there shall remain in the hands of said receiver, at any time, any surplus moneys, he shall report the same to this court, as to the disposition of the same.

And the receiver is further directed to proceed with all practicable dispatch after his entry upon the discharge of his duties, and in con- 156 nection with the president of said company, to take an inventory of all and singular the property and effects of every discription which may come to his possession or under his control in virtue of this order, and to file such inventory in this court.

And the receiver is further empowered, in his discretion, to remove any of the officers or employees of said railroad company other than the president and directors thereof, and such other officers as pertain to and are necessary to maintain the corporate organization; but notwithstanding this reservation the entire management of said road and the power to appoint and remove all managers, superintendents, engineers, and other agents and employees in any way concerned in operating the said road shall belong to the receiver.

The receiver acting in pursuance of this or any order or decree of this court herein, in good faith, shall not be individually liable for any breech of any contract entered into by him as such receiver, or for the fulfillment of any obligation entered into by him as such receiver, or for any injury to the person or property of the parties or of third persons, or for the fault or negligence of his subordinates; but the property, moneys, 157 effects, that shall at any time be in his hands as such receiver shall be bound for all such breaches or wrong, and may, from time to time, as may be necessary, be applied in such manner as this court shall direct.

And it is further ordered that the said defendants have leave at any time to show cause, if any they have, why this order should be set aside, vacated, or amended upon giving to the complainants or their solicitors reasonable notice of their motion, and that upon the hearing of such motion the matter of the same shall be considered without prejudice to the defendant from the order now entered.

It is further ordered that said receiver, before entering upon his duties aforesaid, shall enter into a bond with two sureties to the acceptance of the court in the penal sum of twenty thousand dollars, conditioned for the faithful performance of all duties enjoined upon him by this order. And it is further ordered that the said Jediah F. Alexander shall take an oath before the clerk of this court faithfully to perform his duties as receiver in this cause.

158 On December 7th, 1874, a decree was entered upon the minutes in words and figures following:

PHILO C. CALHOUN AND GEORGE OPDYKE, trustees, &c.,
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY & others.

In this cause the complainant' produce an amendment to the bill heretofore filed by them on the 24th day of October, 1874, and ask leave of the court to file, and for good cause shown the court allows the amendment to be made and orders the same to be filed.

And thereupon complainants move the court for a modification of the order of October 24, 1874, appointing a receiver; and thereupon, in the presence of E. L. Abbott, who appears in open court as counsel for the defendants, and does not resist the motion, but consents thereto so far as he has power so to do, the court orders that the said order be so modified as to authorize and allow the receiver for the purpose of providing money to make payments on account of the balance of purchase money due the State of Tennessee for the road sold as the Edgefield & Kentucky Railroad; from time to time to issue his certificates, which, altogether, shall not exceed two hundred and fifty thousand dollars on so much of
159 the road mentioned in the pleadings as lies and is situated in the State of Tennessee, in such general form as may be approved of by compl'ts providing for the payment thereof out of any of the moneys as are applicable for that purpose, which certificate shall bear interest at a rate not exceeding ten per cent. per annum, and the sums represented by such certificates shall, unless previously discharged, be paid out of any monies realized upon a foreclosure and sale of the mortgaged property within the jurisdiction of this court equally with any other liability incurred by the receiver in the management of said railroad and the protection of the said property coming into his hands as receiver aforesaid. And it is further ordered that said certificates may be sold below par if necessary so to do.

On May 21, 1875, a decree was entered as follows:

PHILO C. CALHOUN, AND GEORGE OPDYKE,
trustees,
vs.
THE ST. LOUIS & SOUTHEASTERN RAILROAD
Company, et al.

Be it remembered that on this the 21st day of May, 1875, this cause
came on to be heard before the U. S. circuit court upon the petition of J.
F. Alexander, praying an injunction against parties therein mentioned,
whereupon it is ordered by the court that an injunction issue
160 from the court enjoining the said Mainer & Butts, and the said John
S. Hill (constable) and the said John H. Galbreath, from further
proceedings against the said J. F. Alexander, or any of his agents, employees, or servants as prayed for in said petition. And an injunction will likewise issue restraining all persons from sueing or garnisheeing the said Alexander, his servants, agents, and employees in reference to or upon any claim against the said receiver or his agents, &c., as aforesaid, unless they first apply to this court.

On July 1, 1875, a decree was rendered as follows:

P. C. CALHOUN & GEORGE OPDYKE
vs.
THE ST. LOUIS & SOUTHEASTERN RAILWAY
Company, et al.

In this cause the counsel for complainants and E. L. Abbett, counsel
for the railway company, and E. F. Winslow, appear in court. And the
complainants' counsel moves the court for leave to the receiver appointed
by a former order of the court to institute and prosecute any suit either at
law or in equity, that may be deemed necessary to be instituted, and to
prosecute any suit that has heretofore been instituted and to have himself
made party to such suit that touches or involves the interest of the
161 property mentioned in the pleadings, for the protection thereof;
and to have himself made a party for the purpose of protecting the
property aforesaid, to any suit that has been instituted, or may hereafter be instituted, that touches the interest or involves the rights of the property aforesaid; and to engage counsel for this purpose, and compensate such counsel out of the funds that may come to his hands or under his control in this cause.

And the court is of opinion that such leave should be given and doth accordingly so order and decree.

On October 23, 1875, a decree was rendered as follows:

PHILO C. CALHOUN AND GEORGE OPDYKE,
trustees,
vs. 2184.
THE ST. LOUIS & SOUTHEASTERN R. R. CO.
et al.

Be it remembered that this cause came on to be heard before the Hon'l

C. F. Trigg, judge, &c., on this 23 day of October, 1875, on the petition of Wm. Luten, and the court being of opinion that the petitioner is entitled to a rule on J. F. Alexander, receiver in this cause, to show cause why he should not be ordered to pay petitioner for the wood in said petition, alleged to have been taken by said receiver: It is declared accordingly, and the clerk will issue a subpœna commanding the said J. F. Alexander to appear in open court on the 1st day of November, 1875, 162 and show cause, if any he has, why such order should not be made on him, as aforesaid.

On the 10th May, 1878, an order was entered as follows:

CALHOUN & OPDYKE, TRUSTEES,
vs.
THE ST. L. & SE. RAILWAY ET AL.

In the matter of the United States.

Be it remembered that this cause came on to be heard before the Hon. John Baxter, United States circuit judge, and the court is pleased to refer the matter to the clerk of this court who will hear proof and report to the court the amount of the internal revenue tax due the government; and, 2nd, if there are sufficient funds in the hands of the receiver to pay the same he will report to the next term of the court and until the coming in of said report all other matters are reserved.

On the 31st October, 1878, an order was entered as follows:

Circuit court of the United States for the middle district of Tennessee.

CALHOUN & OPDYKE
v.
THE ST. LOUIS & SOUTHEASTERN RAILWAY
Co., (consolidated).

UNITED STATES
v.
JAMES H. WILSON, RECEIVER.

And now, on this 31 day of October, came the petitioner, The United States, by J. A. Warder; came also the said receiver, by Bluford 163 Wilson, his attorney, and on motion of the said receiver, the petition is referred to Lewis T. Baxter, who is appointed special commissioner for that purpose, with direction to take proof on the issues of said petition and report the same back to the court with his findings thereon by the first Monday of January next, if practicable, and if not, then to the first day of the next term of the court.

On November 1, 1878, a decree was rendered as follows:

Circuit court of the United States, middle district of Tennessee.

P. C. CALHOUN AND GEORGE OPDYKE
vs.
THE ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (consolidated). } 2184. In equity.

This cause came on to be heard at this term and was argued by counsel, and upon consideration thereof it was, on the first day of November, 1878, ordered, adjudged, and decreed as follows, viz:

I. That the complainants are citizens of the State of New York; that the defendant, The St. Louis & Southeastern Railway Company (consolidated) is a corporation created and organized under and by virtue of the laws of the State of Tennessee, and is a citizen of said State within the meaning of the Constitution and laws of the United States relative to the jurisdiction of this court.

II. That the St. Louis & Southeastern Railway Company (consolidated) was, by the laws of the State of Tennessee and by the laws of the States of Illinois, Indiana, and Kentucky, created by the consolidation
164 of the following railroad companies, viz, The St. Louis & Southeastern Railroad Company, of Indiana and Illinois, a corporation created by the laws of the said States respectively, The St. Louis and Southeastern Railroad Company (Kentucky division), a corporation created under the laws of the State of Kentucky, The Evansville, Henderson, and Nashville Railroad Company, a corporation created under the laws of the State of Kentucky, and The Nashville, Chicago and St. Louis Railroad Company, a corporation created under the laws of the State of Tennessee. And that by virtue of such consolidation said St. Louis and Southeastern Railway Company (consolidated) acquired and became vested with all and singular the rights, powers, privileges, immunities, and franchises, together with the property, real, personal, and mixed, which the said several railroad companies respectively held, possessed, or owned at the time of such consolidation.

III. That the deed of trust or mortgage from The St. Louis & Southeastern Railway Company (consolidated) to Philo C. Calhoun and George Opdyke, trustees, complainants, bearing date October 1, 1872, as set forth in the original bill of complaint herein, was duly executed & delivered by said railway company to said complainants, as trustees, to secure to the holders of bonds therein described payment of the principal and
165 interest thereof, and for all the purposes in said mortgages set forth; that it was duly recorded in the several counties of the State of Tennessee through which said railroad passes, is a valid conveyance for the purposes therein mentioned, and constitutes a lien upon the premises therein described and conveyed, and situated within the jurisdiction of this court, subject, however, in whole or in part to the several liens hereinafter mentioned, and in the manner and to the extent hereinafter specified, but not otherwise.

IV. That the said St. Louis and Southeastern Railway Company (consolidated), for value received, issued, and delivered to various persons forty-nine hundred and twenty-two (4922) bonds of the said company, duly executed and authenticated as required by said mortgages, said bonds bearing even date therewith, and being of the denomination of one thousand dollars ($1,000) each, payable in gold coin of the United States on the 1st day of November, 1907, with interest thereon at the rate of 7 per cent. per annum, payable semi-annually on the first days of February and August in each year, in gold coin of the United States on surrender of the interest coupons attached thereto. That said forty-nine hundred and twenty-two (4922) bonds are now outstanding in the hands of legal holders 166 thereof, who are entitled for the security of the principal and unpaid interest thereon, to the joint and equal benefit of the said mortgage or deed of trust.

V. That the said St. Louis and Southeastern Railway Company (consolidated), on the first day of February, 1874, and on the first days of August and February in each succeeding year, failed to pay any installment of interest on said bonds falling due on said days respectively, or any part of any such installment, and that no part of said interest has been paid by said company or by any one for it, although the said interest was duly demanded by the holders of said bonds and interest coupons, when and where said interest became due and payable according to the tenor and effect of said bonds.

VI. That the amount of interest on said bonds so due and payable by said company on said February 1, 1874, was one hundred and seventy-two thousand, two hundred and seventy dollars ($172,270), and the like sum of one hundred and seventy-two thousand two hundred and seventy dollars ($172,270), became due and payable thereon on the 1st days of August and February respectively in each succeeding year thereafter; that each and all of said installments of interest bear interest at the rate 167 of six per cent. per annum from their maturity respectively, until paid, which last mentioned interest is wholly unpaid; that the amount of interest now due on said bonds and unpaid, including the interest on said unpaid interest, will on January 1, 1879, amount to one million eight hundred and twenty-one thousand seven hundred and fifty-five dollars and twenty-five cents ($1,821,755.25). That by reason of the default aforesaid, on the payment of the interest on said bonds and the continuation thereof as aforesaid, the principal sum of said bonds, being four million nine hundred and twenty-two thousand dollars ($4,922,000), under the provisions of said mortgage, and by virtue of the election of said trustees, complainants, has become due and payable and yet remains due and unpaid.

The said trustees, the complainants Calhoun and Opdyke, are entitled to have all of said above-named sums of money paid into court for the benefit of the legal holder of said bonds and coupons.

VII. That the mortgage or deed of trust from the Nashville, Chicago and St. Louis Railroad Company to Edward F. Winslow, bearing date September 26, 1872, as set forth in the amended bill of complaint herein, was duly executed and delivered by the said railroad company to 168 said Winslow; that the said mortgage was duly recorded in the county of Davidson and Robertson, in the State of Tennessee, in which the property covered in said mortgage is situated, and now constitutes a lien upon the premises therein mentioned prior to all other liens, except that of the receiver's certificates as hereinafter mentioned; that the said railroad company made its bond in the form mentioned in the said

trust deed or mortgage and sealed the same with the common or corporate seal of said company, or caused the names of the president and secretary to be thereto affixed; that the said bond was for the payment of the principal sum of money of one million eight thousand dollars in United States gold coin, at par, to the holder of the said bond, thirty years from the date thereof, with interest thereon from date, payable semi-annually in gold coin as aforesaid on the first days of January and July in each year; that the said Nashville, Chicago and St. Louis Railroad Company thereupon delivered said bond secured by said mortgage or deed of trust to the
said Eward F. Winslow, who thereupon and thereby became the
169 holder of said bond and entitled to the moneys therein mentioned
and agreed to be paid; that the said Winslow thereafter, for value received, assigned and delivered the said bond and mortgage or deed of trust to secure the same to the said Calhoun and Opdyke, trustees and complainants herein, by valid assignment in writing, and they now hold the said bond and deed of trust securing the same as trustees for the holders of said bonds issued under the deed of trust or mortgage to the complainants heretofore mentioned, dated October 1, 1872; that the said Nashville, Chicago and St. Louis Railroad Company, on the 1st day of January, 1874, and on the 1st days of July and January in each succeeding year thereafter failed to pay any of the installments of interest on said bond which fell due and became payable on said days respectively, or any part of such installments, according to the tenor and effect of said bond; that said default had continued for more than thirty days thereafter and prior to the filing of the said amended bill herein; that the amount of said interest on the bond so due and payable by said company on said 1st day of
January, 1874, was thirty-five thousand two hundred and eighty
170 dollars ($35,280), and the like sum of thirty-five thousand two
hundred and eighty dollars ($35,280) became due and payable thereon on the first days of July and January in each succeeding year; that all of the said installments of interest bear interest at the rate of six per cent. per annum from their maturity, respectively, until paid, which last-mentioned interest is wholly unpaid; that the amount of interest now due on said bond unpaid, including interest on said unpaid interest, will, on the first day of January, 1879, amount to four hundred and forty-six thousand two hundred and ninety-two dollars ($446,292); that by reason of the default aforesaid in the payment of the interest of the said bond and the continuance as aforesaid, the said principal sum of said bond, being one million and eight thousand dollars ($1,008,000), under the provisions of said bond has also become due and payable and yet remains due and unpaid; that the St. Louis and Southeastern Railway Company (consolidated) has under the terms and provisions of said consolidation assumed and become bound for the payment of the of the said bond of
the Nashville, Chicago and St. Louis Railroad Company and the
171 interest thereon.

That said assignees, the complainants Calhoun and Opdyke, are entitled to have all of the said above-named sums of money paid into court for the benefit of the legal holders of the bonds of the said St. Louis and Southeastern Railway Company (consolidated), secured by the said deed of trust above mentioned, dated Oct. 1, 1872.

VIII. That the said St. Louis and Southeastern Railway Company (consolidated) is indebted to the unknown holders of the certificates issued by the receiver herein, J. F. Alexander, pursuant to a decree made herein December 7, 1874, in the principal sum of two hundred and fifty thousand dollars and the unpaid interest thereon; that the said certificates were sold for value to the said unknown holders and the net proceeds thereof were applied to the payment of the lien held by the State of Tennessee on all that portion of said consolidated railway, formerly know as the Edgefield and Kentucky Railroad, afterwards the Nashville, Chicago and St. Louis Railroad, and now, by virtue of the consolidation as above-mentioned the defendant The St. Louis and Southeastern Railway Company (consolidated); that the principal of said certificates and interest thereon will amount on the first day of January, 1879, to the sum of two hundred and 172 eighty-nine thousand dollars ($289,000); that the said unknown holders to secure the payment of said certificates with interest have a lien prior to all others upon the mortgaged premises hereinbefore mentioned and situated within the jurisdiction of said court.

IX. That unless the defendant, The St. Louis and Southeastern Railway Company (consolidated) shall, on or before the first day of January, 1879, pay into court in this cause the sum of one million eight hundred and twenty one thousand and fifty-five dollars and twenty-one cents ($1,821,755.21), being the amount of the interest accrued on the bonds outstanding and secured by said mortgage or deed of trust to Opdyke and Calhoun, complainants, with interest thereon as above-mentioned, and the further sum of four million nine hundred and twenty-two thousand dollars ($4,922,000), being the principal of said outstanding bonds secured by said mortgage to the complainants as above-mentioned, and the further sum of four hundred and forty-six thousand two hundred and ninety-two dollars ($446,292), being the amount of the several installments of interest accrued on the bonds outstanding and secured by the mortgage or deed of trust from the Nashville, Chicago and St. Louis Railroad Co. 173 to Edward F. Winslow, with interest thereon as above-mentioned, and the further sum of one million and eight thousand dollars ($1,008,000), being the principal sum of said outstanding bond secured by said mortgage to said Winslow, and also the costs of said complainants herein to be taxed, then and in that event the said mortgaged premises shall be sold, as hereinafter ordered, for the payment of said several sums.

X. For the several debts hereinabove mentioned and directed to be paid the parties to whom the same are owing respectively have liens upon the property and premises herein described, and in order as follows, viz:

First. Upon the following described property, viz: All that certain railroad in the counties of Davidson and Robertson, State of Tennessee, formerly known as the Edgefield & Kentucky Railroad, and the other property real, personal, and mixed, and all the franchises, rights, claims, and privileges, conveyed to it or intended to be so conveyed by Edward F. Winslow and Laura B., his wife, by deed bearing date September 26, 1872, to the said Nashville, Chicago and St. Louis Railroad Company, and also all other property of every description in any 174 wise appertaining to the said railroad, whether real or personal, including all lands, buildings, bridges, iron rails, equipments, rolling-stock, and other property appertaining to said railroad, and also all the franchises, rights, and privileges thereof, Second. Upon all the franchises, rights, privileges, and immunities of the defendant corporaton, the said St. Louis and Southeastern Railway Company (consolidated), and upon all the property of said company or appertaining to its railroad within the jurisdiction of this court, including more especially all that part of said consolidated railroad from a point upon the southernly line of the State of Kentucky and northerly line of the State of Tennessee, near Guthrie, in the State of Kentucky; thence by way of Springfield, in the county of Robertson, State of Tennessee, to the Edgefield Junction; thence by way of Edgefield within the State of Tennessee, over the line of railway owned and operated in common by the said consolidated company and by the Louisville & Nashville Railroad Company to the city of Nashville.

And upon all the rolling-stock owned by the said consolidated company, and all other property, real, personal, and mixed, of said company, within
the jurisdiction of this court, including all the bridges, rights of
175 way, depot grounds, land, all depots, station-houses, engine-houses,
car-houses, freight-houses, or other buildings; all car-shops and machine-shops, all machinery and tools for the construction, operating, or repairing the said railway; and also all franchises and property now or heretofore belonging to the said consolidated company, together with all and singular the tenements and appurtenances thereunto belonging, and the reversional remainders, tolls, incomes, rents, issues, and profits thereof, and also all the estates, rights, titles, and interest whatsoever, as well at law as in equity, of the said consolidated railroad company of, in, and to the same, within the jurisdiction of this court.

The lines are as follows:

1. For all costs taxed or hereafter to be taxed in this cause, for all proper charges and allowances, including attorneys' fees, counsel fees, and compensation to said complainants as trustees herein, and for all sums expended by them in and about the management of said trust, the said complainants have a lien prior to all others.

2. For the debt adjudged to be due to the holders of the receiver's certificates they have a lien subordinate to the above, and prior to all
others.

176 3. For the debt adjudged to be due under the said mortgage to
Edward F. Winslow, and by him assigned to Calhoun and Opdyke in trust, as above mentioned, said complainants Calhoun and Opdyke have a lien subordinate to those of the complainants for costs and allowances and holders of the receiver's certificates, and prior to all others.

4. For the debt adjudged to be due under the aforesaid mortgage to the complainants Calhoun and Opdyke, said complainants have a lien subordinate to those of cost and allowances, and the holders of the receiver's certificates, and said Calhoun and Opdyke as assignees in trust as aforesaid, and prior to all others.

XI. In case default shall be made on the payment of all or any of the said several sums of money herein adjudged to be due the said Calhoun and Opdyke, complainants, it shall thereupon, without further order herein, be the duty of W. B. Reese, esq., who is hereby appointed special commissioner for this purpose, to sell said mortgaged premises, and he shall proceed to sell and dispose of so much of all and singular the railroad and premises of the said defendant corporation, the St. Louis & Southeastern Railway Company (consolidated) as is within the ju-

177 risdiction of this court, at public auction, in the city of Nashville, Tennessee, at such place in said city and at such time or times as he may appoint, having first given notice of the time and place of such sale by advertisement, to be published not less than three times a week for nine weeks in one or more newspapers in the city of Nashville, Tennessee, and shall report his proceedings in the premises to the April term of this court, 1879. Upon the confirmation of such sale and the payment of the purchase money, the clerk of this court shall make and deliver to the purchaser or purchasers of the property so sold good and sufficient deeds for the same, free of all liens herein mentioned, and thereupon the receiver shall deliver to the purchaser of the said property the possession of the same; which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the said railway company and all other persons whomsoever lawfully claiming or to claim the said railroad and premises and property so sold, or any part thereof, by from, through, or under it, and all the equities of redemption of said defendant company shall be, according to the prayer of the original and amended bill herein, forever barred and foreclosed.

178 The purchaser or purchasers of said railway and premises shall be required to pay not less than ten thousand dollars cash in hand, and the balance of the purchase money in not less than two months from the date of the confirmation of such sale, or as the court may then order.

But, after the payment of the cash hereinabove provided for, if the purchaser shall be a holder of the receiver's certificates, or any of the bonds hereinabove declared a lien on the trust properties, then and in that event if the amount bid shall suffice to meet the cash payment and the receiver's certificates, the latter may be received from the purchaser by the clerk as cash; but if the sum bid should not suffice to meet the cash payment and the receiver's certificate, then such certificates shall be received as cash only to the extent of the pro rata of the purchase money which the purchaser would be entitled to receive thereon; and if the sum bid should be more than shall suffice to meet the cash payments and the certificates, then and in that event, after providing for said cash payment and the pay-
179 ment of the certificates, the clerk shall receive from the purchasers
any of the bonds hereinbefore declared liens upon the trust properties as cash to the extent of the pro rata of the purchase money which the purchaser would be entitled to receive upon such bonds. Said bonds and certificates shall be proved before said clerk, and paid over to him within two months of the confirmation of such sale, or as the court may then order. And all holders of said bonds or securities who shall fail to prove the same before the clerk within the time specified shall be barred from participating in the proceeds of such sale.

XII. The proceeds of the sale of the premises hereinabove mentioned shall be applied as follows:

1. To the payment of the costs of said complainants in this action, including court cost, attorneys' fees, and etc., as hereinabove mentioned.

2. To the payment of the amount herein adjudged to be due to the holders of the receiver's certificates, and, if said proceeds be insufficient to pay the same in full, then to their payment pro rata.

3. To the payment of the interest on said bond secured by the mortgage to Edward F. Winslow and assigned to the complainants Cal-

180 houn and Opdyke, with interest on said several installments of interest from their maturity, respectively, until paid, as above mentioned; and, if the proceeds shall exceed the amount thereof, then to be applied to the payment of the principal of said bond.

4. To the payment of the coupons or interest installments on the bonds secured by the said mortgage to the complainants, and ultimately to the principal thereof in the same manner as is provided with reference to the said Winslow mortgage.

5. The surplus, if any, after making all such payments to be paid to the defendant corporation, the St. Louis and Southeastern Railway Company (consolidated).

XIII. As to the mortgage to the complainants herein mentioned, this decree is without prejudice to the rights of the parties in suits and proceedings had to foreclose such mortgages in other jurisdictions, and whatever payments may be made on account of the bond secured by said mortgage under proceedings in this case shall be applied and operate as a payment pro rata thereon, but not as an extinguishment of said bonds or of the lien of said mortgage on any property except such as may be sold under decree herein.

181 XIV. If either of the sums of money herein directed to be paid on or before January 1, 1879, shall be paid before that day, there shall be allowed a rebate of interest at the rate of six per cent. per annum from the date of such payment until January 1st, 1879, unless such payment should be on account of the receiver's certificates above mentioned, in which case the rebate of interest shall be at the rate of ten per cent. per annum.

XV. As to the net earnings which have or may from time to time come into the hands of James H. Wilson as receiver herein, if so much of said premises covered by the mortgage to complainants and lying and being within the jurisdiction of this court, it is ordered and adjudged that said earnings be applied to the payment of the cost, expenses, and allowances of said complainants, and the residue to the reduction of the respective debts hereinbefore directed to be paid, and in the order herein above mentioned for the distributions of the proceeds of sale.

XVI. In order that the court may be thoroughly informed of the transactions of the receiver in the management of the trust property placed in his hands in this case, Lewis T. Baxter is hereby appointed special commissioner to examine and report upon the same; and in making
182 such examination, he will be aided by the advice of R. McP. Smith, esq., one of the solicitors of this court, who is hereby appointed counsel for the said commissioner.

The commissioner will cause said receiver to appear before him and pass his accounts, and will charge him with all sums received in the management of said properties and all rents and profits and tolls which have come to his hands, and will credit him by all disbursements properly made in the operation, repair, preservation, and maintainance of the road and its properties, and with reasonable counsel fees. The commissioner will ascertain and report the net earnings of the entire line of road operated by the receiver and the amount of such earnings credited to line of road in Tennessee, or which should have been credited; and in like manner he will ascertain and report the charges made upon the entire line and the amount thereof debited to the line in Tennessee, and in each case the basis upon which such division is made.

The commissioner will report the amount of earnings paid into this court or paid out by the receiver under the orders of this court, and the
purposes for which such payments were made, and what funds, if
183 any, remain in the court or in the hands of the receiver.

The commissioner will also report as to the condition of the various suits by and against the receiver *in the various suits by and against the receiver* in the State courts and the purposes for which said litigation is being prosecuted.

The commissioner will further report all other matters and things which may seem proper and useful to have the court fully advised in the premises, and shall enter upon the duties of this reference as soon as convenient, and shall complete the same and report his proceedings and conclusions therein by the first day of the next April term of this court.

On April 21, 1879, a decree was entered as follows:

CALHOUN & OPDYKE
vs.
THE ST. LOUIS & SOUTHEASTERN RAILWAY
Company (consolidated).

And now on this, the day of April, 1879, came again the parties, by their counsel, and also W. B. Reese, esq., the special commissioner, heretofore appointed by the decree rendered in this case upon the 1st
day of November, 1878, to make sale of so much of the railroad
184 property and franchises of the said defendant corporation, the St.
Louis and Southeastern Railway Company (consolidated), as is
within the jurisdiction of this court.

And the said special commissioner, having submitted to the court his report of the sale of the said railway property and franchises pursuant to the said decree as aforesaid, the said report is ordered to be filed herein.

And thereupon the said complainants, by their solicitor, Bluford Wilson, esq., moved the court that the said report be in all things approved and confirmed, and the court doth, therefore, order that the motion of the said complainants for such confirmation be set down for hearing on Thursday, the first day of May, of the present term, and that the said defendant corporation, and other parties in interest, have leave, until that date, to file their exceptions, if any, to the report of such special commissioner, and that all other questions thereunder be until then reserved.

185 On May 1, 1879, the following order was made:

CALHOUN & OPDYKE
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY CO.

In this cause it is ordered by the court that all persons having claims against the receiver make themselves parties to this cause and file their claims therein by or before the 1st day of June, 1879, or they will be forever barred. The clerk is ordered to make publication of this order in one of the daily papers published in Nashville two times a week until said first day of June.

On the 30th May, 1879, a decree was entered as follows:

CALHOUN & OPDYKE, TRUSTEES,
vs.
THE ST. LOUIS & SOUTHEASTERN RAILWAY Company (consolidated).

This cause came on further to be heard before the circuit court of the United States for the middle district of Tennessee, sitting in equity, and was heard this 30th April, 1879, upon the previous proceedings and decrees and the report of Wm. B. Reese, special commissioner, which is in the words and figures following:

P. C. CALHOUN AND GEORGE OPDYKE, trustees,
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (consolidated).

186 To the honorable John Baxter, United States circuit judge, sitting for the middle district of Tennesse. In equity.

The defendants having failed to pay into court all or any of the several sums of money adjudged to be due from them to complainants by the decree in this cause rendered upon the 1st November, 1878, on or before the 1st January, 1879, as ordered in said decree, the undersigned, as special commissioner, appointed to make sale of so much of said railway and property and franchises thereof as is within the jurisdiction of the circuit court of the United States for the middle district of Tennessee, in obedience to the terms of the decree gave notice of the time, place, and terms of said sale for nine successive weeks by the publication by insertion of the advertisement herewith submitted and made part hereof three times a week in each of two papers published in the city of Nashville, Tennessee, viz, in the American and the Nashville Banner newspapers. Said advertisement and notice as published as aforesaid is as follows:

187 *Sale of the St. Louis and Southeastern Railw'y (consolidated).*

Circuit court of the U. S. for the middle district of Tennessee.

P. C. CALHOWN AND GEORGE OPDYKE, TRUSTEES,
vs.
THE ST. LOUIS AND SOUTHEASTERN RAILWAY Co., (consolidated).

The defendants having failed to pay into court all or any of the several sums of money adjudged to be due from them to complainants by the decree in this case rendered upon the 1st of November, 1878, in obedience to the decree in said case appointing, empowering, and requiring the undersigned as special commissioner to sell the mortgaged premises within the jurisdiction of the circuit court of the United States for the middle district of Tennessee, in the event of the failure of said defendants to make said payments on or before the 1st day of January, 1879, as required by the terms of said decree,

I will, on Wednesday, the 9th day of April, 1879, at the east door of the Federal court building, in the city of Nashville, Tennessee, corner of Cedar and Summer streets, at the hour of 12 o'clock m., sell and dispose of so much of all and singular the railways and premises of the said defendant corporation, the St. Louis and Southeastern Railway Company (consolidated), as is within the jurisdiction of the circuit court of the United States for
the middle district of Tennessee, at public sale, to the highest bidder.
188 At said sale I will sell the following described property, viz:
All that certain railroad in the counties of Davidson and Robertson, State of Tennessee, formerly known as the Edgefield and Kentucky Railroad, and the other property, real, personal, and mixed, and and all the franchises, rights, claims, privileges conveyed to it, or intended to be so conveyed by Edward F. Winslow and Laura B., his wife, by deed bearing date Sept. 26, 1872, to the Nashville, Chicago, and St. Louis Railroad Company, and also all other property of every description in any wise appertaining to the said railroad, whether real or personal, including all lands, buildings, bridges, iron rails, equipments, rolling stock and other property appertaining to said railroad, and also all the franchises, rights, and privileges thereof.

2nd. All the franchises, rights, privileges, and immunities of the defendant corporation, the said St. Louis and Southeastern Railway Company (consolidated), and all the property of said company, or appertaining to its railroads within the jurisdiction of the circuit court of the United States for the middle district of Tennessee, including more especially all
that part of said consolidated railroad from a point upon the south-
189 erly line of the State of Kentucky, and northerly line of the State
of Tennessee, near Guthrie, in the State of Kentucky; thence by way of Springfield, in the county of Robertson, State of Tennessee, *the* Edgefield junction; thence by way of Edgefield, within the State of Tennessee, over the line of railway owned and operated in common by the said consolidated company and by the Louisville & Nashville Railroad Company, to the city of Nashville.

And all the rolling stock owned by the said consolidated railroad company, and all other property, real, personal, and mixed, of said company, within the jurisdiction of the circuit court of the United States for the middle district of Tennessee, including all the bridges, rights of way, depot grounds, land; all depots, station-houses, engine-houses, car-houses, freight-houses, and other buildings; all car shops and machine shops; all machinery, and tools for the construction, operating, or repairing the said railway; and also all franchises and property now or heretofore belonging to said consolidated company; together with all and singular the tenements and appurtenances thereunto belonging, and the reversions, remainders, tolls,
incomes, rent, issues, and profits thereof; and also all the estates,
190 rights, titles, and interest whatsoever, as well at law as in equity,
of the said consolidated railroad company of, in, & to the same within the jurisdiction of the circuit court of the United States for the middle district of Tennessee.

Upon the confirmation of such sale and the payment of the purchase money, the clerk of the circuit court of the United States for the middle district of Tennessee will make and deliver to the purchaser or purchasers of the property so sold good and sufficient deeds to the same, free of all liens in the decree mentioned, and thereupon the receiver will deliver to the purchaser of the said property the possession of the same; which sale, made as aforesaid, will be a perpetual bar, both in law and in equity, against the said railway company, and all other persons whomsoever lawfully claiming or to claim the said railroad and premises and the property so sold, or any part thereof, by, from, through, or under it, and all the equities of redemption of said defendant company will be, according to the prayer of the original and amended bill herein, forever barred and foreclosed.

191 TERMS OF SALE.—The purchaser or purchasers of said railway and premises will be required to pay not less than ten thousand dollars cash in hand, and the balance of the purchase money in not less than two months from the date of the confirmation of such sale, or as the court may then order.

But after the payment of the cash herein provided for, if the purchaser shall be a holder of the receiver's certificates, or any of the bonds in the decree declared a lien on the trust property, then, and in that event, if the amount bid shall suffice to meet the cash payment and the receiver's certificates, the latter may be received from the purchaser by the clerk as cash; but if the sum bid should not suffice to meet the cash payment and the receiver's certificates, then such certificates shall be received as cash only to the extent of the pro rata of the purchase money which the purchaser would be entitled to receive thereon. And if the sum bid shall be more than shall suffice to meet the cash payments of the certificates, then, and in that event, after providing for the said cash payments and the payment of the certificates, the clerk shall receive from the purchasers any of the 192 bonds declared liens upon the trust properties as cash to the pro rata of the purchase money which the purchaser would be entitled to receive upon such bonds. Such bonds and certificates shall be proved before said clerk, and paid over to him within two months of the confirmation of such sale, or as the court may then order.

W. B. REESE,
Special Commissioner.

As therein notified, upon Wednesday, the 9th of April, 1879, at 12 o'clock noon, at the eastern door at the Federal court building, in the city of Nashville, Tennessee, on the corner of Cedar and Sumner streets, the undersigned offered the property in said advertisement for sale, at public auction, to the highest bidder, upon the terms in said decree and notice thereof, when the property was struck off to "Charles W. Opdyke, agent for Jacob H. Schiff and others, holders of receiver's certificates and bonds," for the sum of seven hundred and twenty-five thousand dollars ($725,000), this being the highest, best, and last bid offered at said sale for the said railway and property. And immediately after the said property 193 was so struck off to the said C. W. Opdyke, as agent, &c., in compliance with the terms and conditions of said sale, and the decretal order of the court, he paid to the undersigned, as special commissioner of the court, the sum of ten thousand dollars ($10,000), as required in said decree. This sum is now in the hands of the undersigned, subject to the order of the court. The undersigned understands and believes that the purchasers are ready and prepared to fully comply with the further terms of the sale, by making payments of the balance of the purchase price as provided in the decree of sale and as ordered by the court.

The undersigned would further report that the said Charles W. Opdyke who bid off said property as agent, &c., has furnished to the undersigned the following statement of the names of the parties for whom he made said purchase, and to whom he desires the decree of title to be made should the court confirm said sale as herein reported. Said memorandum of said purchasers, as furnished by said C. W. Opdyke, is as follows:

194 "Jacob H. Schiff, John B. Dumont, and George Opdyke, as a committee acting on behalf of certain holders of the consolidated mortgaged bonds of the St. Louis and Southeastern Railway Company (consolidated), and of other holders of receiver's certificates associated with them.

"The above are the purchasers under sale herein, April 9, 1879, at Nashville, Tennessee.

"C. W. OPDYKE, *Agent.*
"WM. S. OPDYKE, *Attorney.*"

In conclusion the undersigned would state to the court that at the time of said sale there was a large attendance of the leading railroad officials of this and adjoining States, and that after full opportunity for bidding, and after the first bid of $200,000 had been carried up by counter bidding to the sum of $725,000, this seemed as much as could be got for said property at public auction, and it was struck offas aforesaid.

The undersigned would therefore recommend the confirmation of said sale to the purchasers aforesaid at the price bid, and herein reported.

195 The undersigned would report to the court that in the discharge of his duties as special commissioner of the court, he has incurred the following expenses which he asks the court to direct him or the clerk of the court to pay.

The American charged for making the advertisement of said sale the sum of $156.00, and the Nashville Banner for making publication of said sale the sum of $111.65, and the undersigned agreed to give T. W. Barnes, the crier of said sale, the sum of ten dollars. The bills for said expenses as incurred by your commissioner are herewith submitted as part of this report.

All of which is respectfully submitted.

W. B. REESE,
Special Commissioner.

Which report having been heard and fully understood by the court, and not excepted to, is in all things confirmed.

It is further ordered, adjudged, and decreed by the court that upon payment of the purchase money as provided in the decree of sale, the clerk of this court shall make and deliver to Charles W. Opdyke, agent of Jacob H. Schiff, John B. Dumont, and George Opdyke, committee, &c., the purchaser of the property, rights, & franchises reported sold as aforesaid, or to such person or corporation as he may direct it to be made, a good

and sufficient deed or deeds for the same, free of all liens mentioned
196 in the decree of sale, and thereupon the receiver shall deliver to
such purchaser, or to such person or corporation he may direct said deed or deeds to be made, the full and complete possession of said property, rights, and franchises. It is further ordered and decreed by the court that complainants and defendants in this cause join with the clerk of this court in making the deed or deeds above ordered to be made. Said deed or deeds will be executed, acknowledged, and recorded at the expense of the purchaser or his assignee.

On the same day, to wit, May 30, 1879, another order was entered in words and figures following:

P. C. CALHOUN & GEORGE OPDYKE, TRUSTEES,
vs.
ST. LOUIS & SOUTHEASTERN RAILWAY COMPANY (consolidated).

It being suggested to the court that the purchaser will probably elect to pay the balance due upon his purchase money in receiver's certificates and bonds heretofore declared a lien upon the property sold in this cause; and it being agreed that it will save express charges to direct a special commissioner of this court to go to New York and there
197 receive the certificates, bonds, or coupons which the said purchaser may be entitled to pay into court, it is therefore ordered by this court that Lewis T. Baxter be appointed special commissioner, with power to proceed to New York, and there receive from the purchaser, or his assignee, the balance now due upon the purchase money, whether it be in cash, receiver's certificates, bonds, or coupons, and to give such purchaser, or his assignee, a full discharge and acquittance therefor. Said commissioner will cancel all receiver's certificates and bonds and coupons that may be received by him from said purchaser or his assignee, and if it should become necessary, in his settlement with said purchaser or his assignee, *shall* commissioner will enter a credit upon the face of the bonds held by such purchaser or his assignee for such amount as should be placed upon such bonds under the princip*al*'s settled by the decree of sale in this case. The commissioner will make a full report to this court of his action under this decree, showing the receiver's certificates and bonds and coupons received and cancelled by him, and such credits, if any, as may have been entered by him upon the face of any bond held by such purchaser or his assignee, and shall bring into court and file
198 with his report all such certificates, bonds, and coupons as may be received and cancelled by him hereunder. Said commissioner is also authorized to receive proof of such of said bonds and certificates in New York as may be offered, and he will see that they are properly proven before received by him in payment.

For his compensation for the services and expenses aforesaid said commissioner will be allowed six hundred dollars to be paid out of the cash heretofore paid in by the said purchasers.

It is further ordered that Ed. Baxter, esq., a solicitor of this court, compare the certificates, bonds, and coupons with the said commissioner, and join in his report as to the cancellation and credit above ordered to be made.

On May 30th, 1879, the following order was made:

CALHOUN & OPDYKE, TRUSTEES,
vs.
THE ST. LOUIS & SOUTHEASTERN RAILWAY CO.
(consolidated).

And now comes the complainants, by their solicitors, Demoss & Malone and Bluford Wilson, and move the court for the allowance and payment of the following fees, compensation, and cost to the trustees, solicitors, clerk, and special commissioners herein, to wit:

To Philo C. Calhoun and George Opdyke, trustees, 199 complainants, for their services and responsibilities in carrying out and discharging their duties in the execution of the trusts under the several mortgages herein, the sum of one thousand dollars each, in all........	$200.00
To Demoss and Malone, for their services to said trustees, complainants, as solicitors in said cause.........................	2,000 00
To Bristow, Peet, Burdett & Opdyke, for their services to said trustees rendered as of counsel in this cause..................	2,000 00
To Buford Wilson, for his services to said trustees as one of their counsel herein...	2,000 00
To Wm. B. Reese, for his services as special commissioner herein	700 00
To R. McPhail Smith, for his services rendered pursuant to the terms of the final decree herein............................	700 00
To Lewis T. Baxter, for his services as special commissioner in auditing the receiver's accounts and in examining and reporting upon the transactions of the receiver herein.........	600 00

The said several sums to be paid out of the ten thousand dollars heretofore paid in as purchase money in this cause.

And the court having heard said motion, and the argument of counsel, and being fully advised, does thereupon order, adjudge, and decree
200 that the said motion be allowed, and that the said allowances therein prayed for be granted, save and except as to said Wm. B. Reese, R. McP. Smith, and Lewis T. Baxter. The court doth order that the said Reese and the said Smith be paid at the rate of five hundred dollars each for their services herein, respectively, and the said Lewis T. Baxter be paid three hundred dollars, and that the said Wm. B. Reese be allowed, in addition, all costs and expense for advertising & for fees to auctioneer incurred by him as such special commissioner in and about the sale of the said railway property.

And the court doth further order that the said William B. Reese, pay over to the clerk of this court the sum of ten thousand dollars purchase money received by him as special commissioner for the sale of the railway.

And the court doth further order that all allowances for fees and costs made herein shall be paid by the said clerk forthwith out of the said purchase money to the parties severally thereto entitled.

201 On May 31, 1879, a decree was entered as follows:

CALHOUN & OPDYKE, TRUSTEES,
vs.
ST. L. & S. E. RAILWAY CO.

In re. United States, intervening petitioner.

Be it remembered that this cause came on to be heard before the honorable John Baxter, United States circuit judge, on the proceedings heretofore had, the petition, answer, replication, the assessment, agreed facts, the report of the special commissioner, and the exceptions thereto. And the court, being of the opinion that the United States is not entitled to recover anything upon the pleadings and facts in the case, is pleased to order, adjudge, and decree that the petition be dismissed; and from said decree the United States prayed an appeal to the next term of the Supreme Court of the United States, which is granted.

On May 31st, 1879, a decree was entered as follows:

PHILO C. CALHOUN & OPDYKE
vs.
THE ST. L. AND S. E. RAILWAY CO. (consolidated.)

This cause was further heard this the 31st day of May, 1879, and the decree rendered herein the 30th, of May, 1879, confirming the report of sale of the special commissioner, is so modified as to direct
202 that the receiver turn over to the purchaser or his assignee the entire property, rights, and franchises purchased, as set forth in said report, upon the demand of the purchaser made at any time after ten days from this date.

It is further ordered by the court that the purchaser make the payment of the purchase money within sixty days from the confirmation, according to the terms of the sale as reported by the special commissioner, and upon a failure so to do the court reserves the right to order the special commissioner to resell the property, rights, and franchises, the present purchaser to sustain the loss from such sale, if any should occur, said sale to be made upon the terms prescribed by the original decree.

It is further ordered, adjudged, and decreed by the court that the receiver immediately render his accounts to the clerk of this court of the net profits remaining in his hands, arising from the operation of the road prior to April 9, 1879, and pay the same into court.

It is further ordered by the court that the receiver, upon turning over the property to the purchasers as herein ordered, account with them
203 for the receipts properly arising from the operation of the road sold subsequent to April 9, 1879, and pay to the purchaser the net profits, if any, arising from such operations.

On June 14, 1879, a decree was rendered as follows:

CALHOUN & OPDYKE, TRUSTEES,
vs.
ST. L. & S. E. R'W'Y CO. (CONSOLIDATED).

This cause coming on to be further heard on the 14th day of June, 1879, and the court being sufficiently advised, doth order and decree that the clerk, without delay, tax all the cost that have accrued herein against the receiver, and pay the same out of any moneys that may come into his hands pursuant to orders heretofore made herein, and after paying said costs accrued, and retaining $300 to meet cost that may hereafter accrue, together with all sums adjudged to be due to claimants herein, the court doth further order and decree that the clerk distribute the balance of said moneys remaining in his hands, including the purchase money to be hereafter paid him, as provided by the decree entered in this cause on the 1st November, 1878, and that this cause be retained for such further orders as may be decreed necessary to give effect to and carry out the said
204 last-mentioned decree, and others heretofore made herein.

MIDDLE DISTRICT OF TENNESSEE:

I, Lewis T. Baxter, clerk of the circuit court of the United States for said district, do hereby certify that the foregoing is a true and perfect transcript of the record and proceedings had in the cause in equity lately ditirmined in said court, wherein Philo C. Calhoun and George Opdyke, trustees, were complainants and the St. Louis and Southeastern Railway Company (consolidated) et als. were defendants, so far as the same relates to the intervening petition filed in said cause by the United States of America against the defendant in said cause, as the same appears of record and on file in my office.

Witness my hand and the seal of said court, at office, in Nashville, in said district, this the 30th day of September, 1879.

[SEAL.]

(Indorsement on cover:) No. 157. The United States, intervenor, appellant, vs. James H. Wilson, receiver of the St. Louis and Southeastern Railway Company (consolidated.) M. Tennessee C. C. U. S. Filed 3d December, 1879.

OFFICE SUPREME COURT U.S.
FILED
DEC 6 1882
H. McKENNEY, Clerk.

16-620

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

THE UNITED STATES
v.
WILSON, RECEIVER, &c.
} No. 157.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

THE UNITED STATES
v.
WILSON, RECEIVER, &C. } No. 157.

BRIEF FOR THE UNITED STATES.

This is a case in which the United States appear as *intervenors*, demanding payment of a tax upon "circulation issued" between the months of May, 1873, and November, 1874, inclusive, by the receiver of a railroad company under an order of court, the cause in which the intervention occurs being one for the foreclosure of a mortgage given by the company to secure its bonds.

The *petition* for leave to intervene, *exhibiting* an assessment by the Commissioner of Internal Revenue, is given on pages 42, &c., of the record; the *answer* thereto, upon pages 47, &c.; a *report* allowing the claim is upon page 49, &c., and upon page 72 is the *order* overruling the report and dismissing the petition.

A copy of one of the "certificates of indebtedness relied upon as justifying the claim of the United States, appears upon page 51 of the record, and is as follows:

No. 3491.] [1874.

SAINT LOUIS AND SOUTHEASTERN RAILWAY COMPANY·

Certificate of indebtedness, good for twenty dollars, to H. W Gardiner, paymaster, or bearer, payable at the office of the treasurer, Saint Louis, Mo., four months after date, with interest at the rate of ten per cent. per annum. Good only when countersigned by the paymaster of the company.

J. F. ALEXANDER, *Treasurer*.

I. P. HAINS, *Auditor*.
(On margin:) Countersigned:

H. W. GARDNER, *Paymaster*

148. $20.00.] [Due Dec. 6, 1874.

Twenty-five per cent. of freight bills due the company may be paid in these certificates at their face value before maturity thereof.

In connection therewith the record contains the following entry:

It is agreed by and between James A. Warder, the United States attorney, representing the petitioner, and Bluford Wilson, representing the defendant, that the certificate appended hereto is in the form of those issued by the defendant; that from October, 1873, and to November, 1874, at various times, the defendant, being in need of money, issued the same and paid their laborers and paid them out for supplies and materials furnished, and received them when overdue for freights and debts accruing to the company, or paid them at their face value with interest.

These certificates were issued under orders of the court appointing a receiver in the cause in which this intervention was made (pp. 52, &c., and 55), all that is material therein in this connection being as follows (folios 158, &c.):

The court orders that the said order be so modified as to authorize and allow the receiver, for the purpose of providing money

to make payments on account of the balance of purchase money due the State of Tennessee for the road sold as the Edgefield & Kentucky Railroad, from time to time to issue his certificates, which, altogether, shall not exceed two hundred and fifty thousand dollars on so much of the road mentioned in the pleadings as lies and is situated in the State of Tennessee, in such general form as may be approved of by compl'ts, providing for the payment thereof out of any of the moneys as are applicable for that purpose, which certificate shall bear interest at a rate not exceeding ten per cent. per annum, and the sums represented by such certificates shall, unless previously discharged, be paid out of any monies realized upon a foreclosure and sale of the mortgaged property within the jurisdiction of this court equally with any other liability incurred by the receiver in the management of said railroad and the protection of the said property coming into his hands as receiver aforesaid. And it is further ordered that said certificates may be sold below par if necessary so to do.

The provisions of the Revised Statutes relied upon as imposing and enforcing the tax in question are paragraph third of section 3408, and section 3185, as follows:

SEC. 3408. There shall be levied, collected, and paid, as hereafter provided—

First. A tax of one-twenty-fourth of one per centum each month upon the average amount of the deposits of money, subject to payment by check or draft, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day, with any person, bank, association, company, or corporation engaged in the business of banking.

Second. A tax of one-twenty-fourth of one per centum each month upon the capital of any bank, association, company, corporation, and on the capital employed by any person in the business of banking beyond the average amount invested in United States bonds: *Provided*, That the words "capital employed" shall not include money borrowed or received from day to day, in the usual course of business, from any person not a partner of or interested in the said bank, association, or firm.

Third. A tax of one-twelfth of one per centum each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or to be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and an additional tax of one-sixth of one per centum each month upon the average amount of such circulation, issued as aforesaid, beyond the amount of ninety per centum of the capital of any such bank, association, corporation, company, or person.

In the case of banks with branches, the tax herein provided shall be assessed upon the circulation of each branch severally, and the amount of capital of each branch shall be considered to be the amount allotted to it.

The deposits in associations or companies known as provident institutions, savings banks, savings funds, or savings institutions, having no capital stock and doing no other business than receiving deposits to be loaned or invested for the sole benefit of the parties making such deposits, without profit or compensation to the association or company, shall be exempt from tax on so much of their deposits as they have invested in securities of the United States, and on all deposits not exceeding two thousand dollars made in the name of any one person.

SECTION 3185. All returns required to be made monthly by any person liable to tax shall be made on or before the tenth day of each month, and the tax assessed or due thereon shall be returned by the Commissioner of Internal Revenue to the collector on or before the last day of each month. All returns for which no provision is otherwise made shall be made on or before the tenth day of the month succeeding the time when the tax is due and liable to be assessed, and the tax thereon shall be returned as herein provided for monthly returns, and shall be due and payable on or before the last day of the month in which the assessment is so made. When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of five per centum, together with interest at the rate of one per centum per month, upon such tax from the time the same became due; but no interest for a fraction of a month shall be demanded: *Provided*, That notice of the time when such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner of Internal Revenue. It shall then be the duty of the collector, in case of the non-payment of said tax on or before the last day of the month, as aforesaid, to demand payment thereof, with five per centum added thereto, and interest at the rate of one per centum per month, as aforesaid, in the manner prescribed by law; and if said tax, penalty, and interest, are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law.

For error is assigned the order (folio 261) dismissing the petition of the United States.

Under paragraph "Third," above, an association, corporation, &c., in order to become liable to taxation, need not be a bank.

The form of the certificates in question, being payable to the paymaster of the company or bearer and for round sums of money, as well as the agreement of counsel given above, shows that they were "intended to be used as money," and this is further indicated by the number of of them issued, the one given above being "No. 3491." These certificates seem to steer clear of the reasoning of the court in Van Auken's case (96 U. S., 366), for upon their face they may be money, and the *purpose* in issuing them is admitted.

That they were issued under an order of court does not protect them from any taxation otherwise competent, and no doubt the court intended that they should be subject to any public burden incident to their class.

Nor is the circumstance that they were issued because of a "present distress" in the affairs of the company material, for the bills of credit (Veazie Bank *v.* Fenno, 8 Wallace, 533) of the United States, at present so large a part of the circulating medium of this country, originated in a like exigency, and they will probably cease with the consequences of that exigency. That the *distress* of the company lasted for only a year or so, and the circulation of their bills of credit for no more, seems unimportant in this connection.

S. F. PHILLIPS,
Solicitor-General.